United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

CIVIL DOCKET

United States District Court for the District of Columbia

CUNNINGHAM, ET AL vs. ENGLISH, ET AL [illegible]

Proceeding
Supplemental Page No. 1

DATE		PROCEEDINGS		FEES	TOTAL
		PARTIES	ATTORNEYS		
	1.	JOHN CUNNINGHAM	Dodd, Kaplan & Schmidt		
			Woodward Building		
	2.	THOMAS C. MANNING	[illegible] Lambert		
			[illegible]		
	3.	FRANK KENNEDY	[illegible] Simmons		
			[illegible] M. Schiffer		
	4.	ANDREW BOGGIA	[illegible]		
			[illegible] Williamson		
	5.	GEORGE BECKER	[illegible] South Bennett, [illegible], Ill.		
			[illegible] McKay		
	6.	JOSEPH MOLLOY	[illegible]		
	7.	JOHN McMANUS			
	8.	HAROLD WIL[illegible]			
	9.	STEVE MILONE			
	10.	JOHN McGLYNN			
	11.	EDWARD McFARLAND			
	12.	JOHN OLSEN			
	13.	HOBART GALE			
		v.			
	1.	JOHN F. ENGLISH, individually and	Martin F. O'Donoghue		
		as General Secretary-Treasurer of	Thomas [illegible]		
		International Brotherhood of	Patrick C. O'Donoghue		
		Teamsters, Chauffeurs, Warehousemen	[illegible]		
		and Helpers of America, AFL-CIO	Edward Davis		
			Tower Building		
		(OVER)			

CIVIL DOCKET

United States District Court for the District of Columbia

CUNNINGHAM, ET AL vs. ENGLISH, ET AL C. A. No. 2361-57 Preceding ~~Supplemental~~ Page No. 2

Date		Proceedings		Fees	Total
		PARTIES (CONT.)	ATTORNEYS (CONT)		
			Martin F. O'Donaghue		
	2.	DAVE BECK	Thomas X. Dunn		
			Patrick C. O'Donaghue		
	3.	DANIEL J. MURPHY	Tower Building		
	4.	JOHN J. CONLIN	do		
	5.	SIDNEY L. BRENNAN	do		
	6.	JOHN T. O'BRIEN	do		
	7.	FRANK BREWSTER	do		
	8.	WILLIAM A. LEE	do		
	9.	JOSEPH DIVINY	do		
	10.	JAMES R. HOFFA	do		
	11.	EINAR MOHN	do		
	12.	HARRY TEVIS	do		
	13.	INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO	Martin F. O'Donoghue Thomas F. O'Donoghue Patrick C. O'Donoghue Girard Treanor Tower Building.		
		Danzansky & Dickey Joseph M. Williamson 1406 G. St., N.W.	Edward Bennett Williams 1000 Hill Bldg.		
			Agnes A. Neill		

CIVIL DOCKET

United States District Court for the District of Columbia

Parties	Attorneys	Number
	(SEE PRECEDING PAGE)	2361-57
JOHN CUNNINGHAM, ET. AL		Action for: INJUNCTION
v.		
JOHN F. ENGLISH, ET AL		
(See preceding page for complete caption)	Jury demand ☐ Report Judgt. ☐	

Taxed Costs	
Atty.	
Marshal	
Clerk	
Witnesses	
Depositions	
Examiner	
Ct. Appls.	
TOTAL	

Date		Account	Rec'd		Disb'd		Date	Account	Rec'd	Disb'd
1957										
Sept	19	Dodd	10	00						
Sept	19	U. S. Treas.			10	00				
Sept.	28	DUNN:U.S. TREAS.	5	00	5	00				
Sept.	28	Dunn; U.S.Treas.	250	00	250	00				
Sept.	28	O'Donoghue; U.S. Treas		50		50				
Sept.	20	Schmidt; U.S. Treas.	1	00	1	00				
Oct.	17	Dodd; U.S. Treas.	1	50	1	50				
Oct.	23	O'Donoghue; U.S. Treas.	5	00	5	00				
Oct.	23	O'Donoghue.	250	00						
Oct.	25	O'DONOGHUE; U.S. Treas.	1	00	1	00				
1958										
May	12	U.S. Treas.			500	00				
July	17	Hoguet; U.S. Treas.	5	00	5	00				
Aug.	14	Williams; $5	~~5~~	~~00~~	5	00				
Aug.	14	Deft. #13	250	00						
Oct	9	Pratt U. S. Treas.		50		50				
Oct.	1[illegible]	Williams; U.S. Treas.	8	00	8	00				
Dec	1	Pratt; U.S. Treas.		60		60				
Dec.	31	Danzansky & Dickey; U.S. Treas.	5	00	5	00				
1959 Jan	23	Bergan; U.S. Treas.		50		50				
Feb	9	Polnick; U.S. Treas.	1	10	1	10				

CIVIL DOCKET

United States District Court for the District of Columbia

Date		Proceedings	Fees	Total
957		Deposit for cost by		
Sept	19	Complaint, appearance Exhibit A,B, filed		
Sept	19	Summons, copies (1) and copies (1) of Complaint issued Deft. #13 ser. 9-19-57		
Sept	19	Summons, copies (2) copies (2) complt. Deft. #1 #1N.F. 9-24-57		
		#11 N.F. 9-24-57		
Sept.	20	Affidavits (53) filed		
Sept.	20	Motion of pltfs. for temporary restraining order & preliminary		
		injunction; P&A; filed		
Sept.	20	Affidavit of pltfs. filed		
Sept.	20	Affidavit of Godfrey P. Schmidt, exhibits I,II,III,IV,IV-A & V filed		
Sept.	20	Summons (8) and copies (8) of complaint & affidavit of Godfrey		
		P. Schmidt issued vs. defts. 2,3,4,5,6,7,8 & 10. All N.F. 9-23-57 filed		
		$1.00 pd. by G. Schmidt		
		ser. #13 9-24-57; 1 & 11 N.F. 9-24-57		
Sept.	20	Rule to show cause, returnable Sept. 27, 1957. (N) Letts, J. filed		
Sept	23	Summons, copies (2), copies (2) of complt and affidavits vs. 9 & 12 issued. N.F. 9-28-57		
Sept.	27	Motion of deft. #13 to quash service of process; P&A; affidavits (3);		
		appr. of Martin F. O'Donoghue; Thomas X. Dunn, Patrick C.		
		O'Donoghue, Girard Treaner & Edward Davis; c/s 9-27-57 filed		
Sept.	27	Motion of deft. #13 to dismiss; P&A; affidavit & exhibit "A";		
		c/s 9-22-57 filed		
Sept.	27	Affidavits (3) in response to Rule to show cause & in support of motion		
		to dismiss. filed		
Sept.	27	Affidavits (29) in response to Rule to show cause. filed		
Sept.	27	Affidavit of John L. Calvocoressi filed		
Sept.	27	Affidavit of Godfrey P. Schmidt filed		
Sept.	27	Pltf's memo of points & authorities. filed		
Sept.	27	Affidavit of John Cunningham. filed		
Sept.	27	Memo of pltfs in re sufficiency of service of process. filed		
Sept.	27	Memo of pltfs in re jurisdiction of court. filed		
Sept.	27	Affidavits (87) filed		
Sept.	27	Order denying motion to quash service. (N) Letts, J.		
Sept.	27	Order denying motion to dismiss complaint. (N) Letts, J.		
Sept.	28	Findings of fact and conclusions of law. (N) Letts, J.		
Sept.	28	Order for preliminary injunction vs. deft. IBT and setting injunction		
		undertaking in amount of $50,000.00 (N) Letts, J.		
Sept.	28	Injunctive undertaking of pltfs. with The Fidelity & Casualty Company		
		of New York in amount of $50,000.00 approved & filed. Letts, J.		
Sept.	28	Notice of appeal. Deposit of $5.00 by Mr. Thomas Dunn. filed		
Sept.	28	Order that deft. IBT pay into registry of Court the sum of $250.00		
		in lieu of cost bond on appeal. (N) Letts, J.		

SEE NEXT PAGE

CIVIL DOCKET

United States District Court for the District of Columbia

UNNINGHAM et al. vs. ENGLISH et al. C. A. No. 2361-57 Supplemental Page No. 1

Date		Proceedings	Fees	Total
1957				
Sept.	28	Deposit of $250.00 into Registry of Court by Mr. Dunn		
Sept.	28	Order transmitting original records on appeal. (N) Letts, J.		
Sept.	28	Record on appeal delivered to U. S. Court of Appeals (Orig. file);		
		Deposit $.50 by Martin F. O'Donoghue, atty.		
Sept.	30	Certified copy of order of U. S. Court of Appeals for D.C. staying		
		injunction pending final disposition of appeal etc. filed		
Oct.	9	Stipulation extending time for deft. to file motion or other		
		responsive pleadings to 10-21-57. filed		
Oct.	14	Amended complt. of pltf.; Exhibits A & B. filed		
Oct.	14	Summons, copies (2) & copies (2) of amended complt. issued vs.		
		defts. #1 & 2. N.F. 11-5-57		
Oct.	14	Deposit by Thomas J. Dodd as fee for issuance of Rule to Show Cause		
		& two copies. $1.50		
Oct.	14	Injunction undertaking of pltfs. with The Aetna Casualty and Surety		
		in the sum of $10,000.00 approved - Letts, J. filed		
		#13 serv. 10-14-57		
Oct.	14	Order to Show Cause returnable 10-21-57 & temporary restraining		
		order, $10,000.00 security. (Issued at 11:00 A.M.) Letts, J. (N)		
Oct.	14	Order staying preliminary injunction ordered by Court on September		
		28th and advancing cause for immediate trial upon cause being		
		calendared regardless of the pendency of present appeal.		
		Sirica, J. (N)		
Oct.	16	Answer of deft. #13 to amended complaint; c/s 10-16-57. filed		
Oct.	17	Motion of deft. #13 to calendar case for trial as to deft. #13; P&A;		
		c/s 10-16-57. filed		
Oct.	19	Transcript of proceedings of 10-18-57. Reporter David L. Harrison:		
		page 1-13. filed		
Oct.	18	Affidavit of Godfrey P. Schmidt. filed		
Oct.	21	Affidavit of John Cunningham. filed		
Oct.	21	Affidavit of Michael J. McInerney. filed		
Oct.	21	Affidavit of John L. Calvocoressi. filed		
Oct.	21	Amendment of deft. #13 to answer to amended complt.; c/s 10-19-57;		
		filed		
Oct.	21	Affidavit of John F. English with Exhibits A-1 thru A-7, and Exhibits		
		B&C. filed		
Oct.	21	Motion of deft. #13 to dissolve temporary restraining order; Motion		
		to dismiss Rule to show cause; and Motion to dismiss amended complt.		

CIVIL DOCKET

United States District Court for the District of Columbia

Cunningham et al. vs. English et al. C. A. No. 2361-57 Supplemental Page No. 2

Date		Proceedings	Fees	Total
957 Oct	21	(con't) c/s 10-21-57; affidavit; Exhibits 1-4 inclusive; P&A; c/s 10-21-57. filed.		
Oct	21	Notice of deft. #13 for taking depositions of John Cunningham and all other plaintiffs; c/s 10-17-57. filed.		
Oct	21	Affidavit of Einar Mohn. filed.		
Oct	21	Affidavit of Joseph Konowe, Exhibits A, B, C, D, E, F, G, H, I, J, c/s 10-21-57. filed.		
Oct	21	Appearance of Martin Martin F. O'Donaghue, Thomas X. Dunn, and Patrick C. O'Donaghue for defts. #2 thru #12. filed.		
Oct	21	Memorandum in re analysis of the records of the convention of the International Brotherhood of Teamsters. filed.		
Oct	21	Answer of defts. #1 - 12 incl. to complt.; certificate of service. filed. filed.		
Oct	21	Calendared (N)		
Oct	22	Transcript of proceedings of 10-21-57; pp. 1-118; Reporter, David L. Harrison. filed.		
Oct	22	Affidavit of Tony Bai. filed.		
Oct	23	Proposed findings of fact and conclusions of law by deft. c/s 10-23-57. filed		
Oct	23	Transcript of proceedings of 10-22-57; Vol.2, pp. 119-286; Reporter David L. Harrison. filed		
Oct	23	Order denying deft's motion to dissolve temporary restraining order; to dismiss rule to show cause; and to dismiss amended complaint. Letts, J. (N)		
Oct	23	Order granting preliminary injunction vs. defts; bond fixed at $100,000.00. Letts, J. (N)		
Oct	23	Findings of fact and conclusions of law. Letts, J. (N)		
Oct	23	Order directing defts. to pay into registry of court $250.00 in lieu of posting cost bond. Letts, J. (N)		
Oct	23	Order transmitting original records and transcript of testimony to USCA. Letts, J. (N)		
Oct	23	Notice of appeal by all defts; Deposit by Patrick O'Donoghue, $5.00; copies mailed to Dodd, Kaplan and Schmidt, Woodward Bldg. filed		
Oct	23	Deposit by Patrick O'Donoghue, $250.00 cash in lieu of filing cost bond on appeals.		
Oct	24	Transcript of proceedings of 10-23-57; Vol.3, pp. 287-356; Reporter, David L. Harrison. filed		
		(next page)		

CIVIL DOCKET

United States District Court for the District of Columbia

[illegible] 7 Supplemental Page No. 3

Date	Proceedings	Fees	Total
[illegible]	[illegible] filed		
[illegible]	[illegible] filed		
[illegible]	[illegible] filed		
[illegible]	[illegible] (N)		
[illegible]	Record on appeal delivered [illegible]		
[illegible]	[illegible]		
	[illegible] & filed		
	[illegible] filed		
[illegible]	[illegible] discharge		
	[illegible] filed		
[illegible]	[illegible] filed		
[illegible]	[illegible] filed		
[illegible]	[illegible]		
	[illegible] filed		
[illegible]	[illegible] filed		
[illegible]	[illegible] filed		
[illegible]	[illegible]		
[illegible]	[illegible] filed		
[illegible]	[illegible] filed		
[illegible]	[illegible]		
[illegible]	[illegible]		
	[illegible] (N)		
[illegible]	[illegible]		
	[illegible] documents [illegible] (N)		
[illegible]	Appearance of Edward Bennett [illegible] filed		
[illegible]	Order [illegible] Cunningham & Borza to answer questions &		
	[illegible] Cunningham to produce documents [illegible]		
	[illegible] (N)		
[illegible]	Transcript of proceedings [illegible] 12-29-67 [illegible] pp. 1-28 [illegible] (Reporter [illegible]) filed		
[illegible]	Deposition of Andrew Borza & John Cunningham [illegible] 57 [illegible]		
	paid by deft. filed		

CIVIL DOCKET

United States District Court for the District of Columbia

CUNNINGHAM et al. vs. ENGLISH [illegible] No. [illegible]-57 Supplemental Page No. 4

Date		Proceedings	Fees	Total
1957				
Dec.	2	Appearance for pltfs. of M[illegible] Hartford, Connecticut. filed		
Dec.	2	Appearance of John [illegible] Hartford filed		
Dec.	2	Hearing begun; respited until 10:00 a.m. [illegible] (reporter D. Harrison.) Letts, J.		
Dec.	[illegible]	Deposition of John Cunningham [illegible] filed		
Dec.	[illegible]	Appearance of [illegible] Neill [illegible] filed		
Dec.	[illegible]	Hearing resumed; respited until [illegible] (reporter D. Harrison.) Letts, J.		
Dec.	[illegible]	Transcript of proceedings [illegible] Harrison.) filed		
Dec.	[illegible]	Transcript of proceedings [illegible] (reporter, D. Harrison.) filed		
Dec.	4	Hearing resumed; respited until 10:00 a.m. tomorrow. (reporter Harrison) Letts, J.		
Dec.	5	Transcript of proceedings 12-4-57. [illegible] pp. [illegible]8-392. (reporter D. Harrison.) Letts, J.		
Dec.	[illegible]	Hearing resumed; respited until 10:00 am 12-6-57 (reporter D. Harrison.) Letts, J.		
Dec.	[illegible]	Transcript of proceedings 12-5-57 [illegible] 57 (reporter D. Harrison.) Letts, J.		
Dec.	6	Hearing resumed; respited until 10:00 a.m. 12-9-57. (reporter D. Harrison.) Letts, J.		
Dec.	9	Hearing resumed; respited until 10:00 a.m. 12-10-57. (reporter D. Harrison.) Letts, J.		
Dec.	10	Transcript of proceedings 12-6-57 [illegible] pp. [illegible]-684. (reporter D. Harrison.) Letts, J.		
Dec.	10	Transcript of proceedings 12-9-57. Vol. [illegible] pp. 685-829. (reporter Harrison.) Letts, J.		
Dec.	10	Hearing resumed; respited until 10:00 am 12-11-57. (reporter D. Harrison.) Letts, J		
Dec.	11	Transcript of proceedings, 12-10-57. Vol. [illegible] pp. 830-987. (reporter D. Harrison.) Letts, J.		
Dec.	11	Hearing resumed; respited until 10:00 a.m. [illegible]-57. (reporter D. Harrison.) Letts, J.		
Dec.	12	Transcript of proceedings of 12-11-57. Vol. VII, pp. 988-1158. (reporter D. Harrison.) Letts, J.		

Supplemental Page No.

[illegible]	[illegible]	[illegible]	Total
[illegible]	[illegible] Letts.		
[illegible]	[illegible] Letts.		
[illegible]	[illegible] Letts.		
[illegible] 2720-2729	[illegible] Letts.		

CIVIL DOCKET

United States District Court for the District of Columbia

[illegible] C. A. No. [illegible]1-57 Supplemental Page No. 6

	Proceedings	Fees	Total
	[illegible] resumed [illegible] 10-30 [illegible] to [illegible] Reporter [illegible]		
	Costs [illegible]		
	[illegible] proceedings [illegible] 230-29[illegible]		
	[illegible]		
	[illegible] resumed [illegible] 10-30 [illegible] 58 Reporter [illegible]		
	Costs [illegible]		
	[illegible] Proceedings [illegible] 10-[illegible] 976-37[illegible] Reporter		
	Letts, J.		
	[illegible] resumed [illegible] Reporter [illegible]		
	Letts, J.		
	[illegible] resumed [illegible] 10:00 [illegible] Reporter [illegible]		
	Letts [illegible]		
	[illegible] proceedings [illegible] 58 [illegible] 20 [illegible] Reporter		
	Letts [illegible]		
	[illegible] proceedings [illegible] 58 [illegible] 379-50[illegible] Reporter		
	[illegible]		
	[illegible] resumed [illegible] 10:00 [illegible] 58 Reporter [illegible]		
	Letts [illegible]		
	[illegible] resumed [illegible] Monday [illegible] 20-58 [illegible] 00 [illegible] Reporter [illegible]		
	Letts, J.		
	[illegible] proceedings [illegible] 72 [illegible] 705 [illegible]		
	Letts, J.		
	[illegible] proceedings [illegible] 16-58 [illegible] 706-[illegible] Reporter		
	Letts, J.		
	[illegible] resumed [illegible] 10:00 [illegible] 58 Reporter [illegible]		
	[illegible] Letts, J.		
	[illegible] (Consent order [illegible] presented on 7-28-58)		
	[illegible]		
	[illegible] entered [illegible] cause [illegible]		
	[illegible] Letts, J.		
	[illegible] persons [illegible] added parties defendant		
	[illegible] Gibbons, Gordon [illegible] Conklin, George [illegible] Mock, John		
	[illegible] Thomas [illegible] Owen Brennan, John [illegible] Backhus and		
	[illegible] Filed.		
	[illegible] appears as attorney for the said added parties		
	[illegible] adopt [illegible] answer heretofore filed as well as en[illegible]		
	[illegible] record [illegible] (N) Letts, J.		

CIVIL DOCKET

United States District Court for the District of Columbia

CUNNINGHAM, ET AL vs. ENGLISH ET AL C. A. No. [illegible]61-57 Supplemental Page No.

DATE		PROCEEDINGS	[illegible]	TOTAL
1958 Jan	24	Transcript of proceedings 1-20-58, Vol. 24, pp 3715-3719. [illegible]		
Jan	24	Transcript of proceedings, 1-21-58, Vol. 25, pp 3720-3739. [illegible]		
Jan	31	Consent order dissolving preliminary injunction [illegible] appointing Godfrey P. Schmidt, [illegible] Cayton, to serve as a board of monitors for the International Brotherhood of Teamsters [illegible] naming [illegible] Cayton as Chairman of said board [illegible]		
Feb.	[illegible]	[illegible] for order [illegible] consent decree of 1-31-58; c/m 2-[illegible]-58 [illegible]		
Feb.	[illegible]	Oath of Monitors.		
[illegible]	[illegible]	Consent order [illegible]	(R)	
Feb.	[illegible]	Receipt of [illegible] for exhibits.		
Feb.	10	Order vacating undertaking filed on 10-31-57 and discharging surety. [illegible] Letts, J.		
Feb.	[illegible]	Amendment of [illegible] to order pursuant to paragraph [illegible] of consent decree of 1-31-58; c/m 2-[illegible]-58		
Apr.	3	Certified copy of agreement of dismissal of appeal [illegible] from the United States Court of Appeals. filed.		
Apr.	23	Motion of deft. #13 for return of $500.00 deposited for costs on appeal; consent of atty. for plfs. filed.		
Apr.	23	Order directing withdrawal of $500.00 from the registry payable to deft. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. (N) [illegible]		
Apr.	28	Appearance of Maurice Friedman as atty. for John Cunningham only. filed.		
Apr.	28	Petition of John Cunningham for removal of Godfrey P. Schmidt as monitor; affidavit of John Cunningham; affidavit of Murray S. Levin; exhibit A; c/m 4-28-58. M.C. filed.		
Apr.	28	Petition of John Cunningham for reimbursement of expenses; affidavit of John Cunningham; c/m 4-28-58; M.C. filed.		
Apr.	29	Petition of pltfs. (except for John Cunningham) for reimbursement of of expenses; notice; Appearance of Godfrey P. Schmidt as atty. for said petitioners; (12 E. 41st St, N.Y., N.Y.) c/s 4-28-58; exhibit A. M.C. filed.		
Apr.	29	Affidavit of Godfrey P. Schmidt for allowance of compensation for services; exhibits A, B; c/s. Appearance of Hays, Podell, Algase, Crim & Feuer as attys. for Godfrey P. Schmidt; M.C. filed.		

CIVIL DOCKET

United States District Court for the District of Columbia

CUNNINGHAM vs. ENGLISH C. A. No. 2361-57 Supplemental Page No. 8

Date		Proceedings	Fees	Total
1958 Apr.	30	Application for order pursuant to p. 14 of order of 1-31-58. c/m 4-30-58. affidavit, exhibits A thru P. M.C. filed		
May	2	Affidavit of Joseph J. LoBrutto in support of request for allowance of counsel fees. c/s filed		
May	12	Paid $500.00 to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America by U.S. Treasury Check pursuant to order of court filed 4-2-58.		
May	12	Statement of counsel in aid of motion for order pursuant to para. 14 of consent decree of 1-28-58. c/m 5-9-58. filed		
May	13	Statement by Thomas J. Dodd of expense. c/m 5-12-58. filed		
May	13	Statement by M. J. Blumenfeld of expenses. filed		
May	13	Affidavit (2) of Godfrey P. Schmidt, exhibits (2), affidavit signed by Manning, Kennedy, Boggia, McFarland, McGlynn, Will, Gale, Malloy, McMand, Becker, Milone & Olson. Affidavit of mailing. filed		
May	14	Resignation of Judge Nathan Cayton as Chairman & Member of Board of Monitors. (Letter addressed to Judge Letts) filed		
May	15	Affidavit of John P. Newington filed		
May	15	Opposition of John Cunningham to motion for allowance of fees by Dodd, Blumenfeld and Schmidt, and to amended application by Godfrey P. Schmidt. c/m 5-15-58. filed		
May	21	Request of pltf. John Cunningham to be heard in connection with appointment of monitor. c/m 5-21-58 filed.		
May	27	Resignation of Nathan Cayton as Monitor filed		
May	27	Order relieving Honorable Nathan Cayton as Monitor. (N) Letts.		
May	27	Order appointing Martin F. O'Donoghue as Monitor & Chairman of the Board. (N) Letts.		
May	27	Oath of office of Martin F. O'Donoghue as Monitor filed.		
May	28	Motion of defts. for production of documents. c/m 5-28-58. P&A. M.B. FILED.		
May	28	Memorandum of P&A of deft. in opposition to several motions of pltfs & pltfs. counsel for fees. c/m 5-28-58. filed.		
June	11	Stipulation of Godfrey P. Schmidt, Thomas J. Dodd & M. Joseph Blumfeld in re fees and expenses. filed.		
June	11	Memorandum in reply to defts. (1) P&A in opposition to pltfs. counsel's motion for fees and expenses & (2) in answer to defts' P&A in support of defts' motion for production of documents. c/m 6-10-58. filed.		

CIVIL DOCKET

United States District Court for the District of Columbia

CUNNINGHAM vs. ENGLISH No. 2361-57 Supplemental Page No. 9

Date		Proceedings		
1958 June	11	Memorandum on behalf of Godfrey P. Schmidt in support of application to		
		fix fees of plffs' counsel. (m 6-10-58) filed.		
June	17	Appearance of [illegible] as counsel for [illegible] applicant		
		under Para. 11 of [illegible] 5-30-58 filed.		
June	19	Addendum to claim for reimbursement of Thomas [illegible] Dodd [illegible] 6-11-58		
		filed.		
June	26	[illegible] filed.		
June	26	Appearance of William [illegible] Becker as counsel for petitioner Joseph		
		[illegible] Bratto[illegible] [illegible]		
June	27	Order reimbursing M. Joseph Blumenfeld [illegible] 7 and directing		
		defendants [illegible] to pay over to said		
		M. Joseph Blumenfeld [illegible]		
June	27	Order reimbursing Thomas [illegible] Dodd [illegible] and directing that		
		the [illegible] pay over to		
		said Thomas [illegible] Dodd the sum of $ 999 [illegible] [illegible]		
June	27	Order granting [illegible] to produce [illegible] income tax returns		
		[illegible] Dodd and M. Joseph		
		Blumenfeld to submit [illegible] income [illegible]		
		[illegible] 30-58 and directing [illegible]		
		made a matter of record [illegible]		
June	30	Order [illegible] petition of [illegible] for removal of Godfrey		
		Schmidt [illegible]		
June	30	Order reimbursing Godfrey P. Schmidt in amount of $ [illegible]		
		[illegible]		
June	30	Order denying [illegible] motion for expenses and fees (N) [illegible]		
June	30	Motion of Messrs. Schmidt, Dodd & Blumenfeld for counsel fees [illegible]		
		and [illegible] under [illegible] agreement [illegible] filed.		
June	26	Motion of plffs. for reimbursement of expenses [illegible] and [illegible]		
		agreement (Rep. [illegible]) [illegible]		
July	9	Memorandum re consent decree and [illegible] for consideration of		
		services of attorneys Godfrey P. Schmidt, Thomas [illegible] Dodd and		
		M. Joseph Blumenfeld in amount of $220,000.00 (Order to be		
		presented) (N) filed.		
Jul	8	Affidavit of Godfrey P. Schmidt filed.		
Jul	8	Memo of Authorities of M.J. Blumenfeld filed.		
Jul	14	Order denying Application of Peter W. Hoguet [illegible]		

CIVIL DOCKET

United States District Court for the District of Columbia

C. A. No. ______ Supplemental Page No. 10

		Proceedings	Fees	Total
[illegible]	[illegible]	Order granting counsel fees in sum of $210,000.00 to Godfrey P. Schmidt,		
		Esq., Thomas F. Dodd, Esq. and M. Joseph Blumenfeld (N) Letts, J.		
[illegible]	[illegible]	Notice of appeal by defs. [illegible] deposit by John [illegible] Pratt; $5.00		
		Copies mailed to [illegible] Schmidt, Thomas F.		
		Dodd & M. Joseph Blumenfeld. [illegible] filed		
[illegible]	[illegible]	[illegible] Order [illegible] and Curran [illegible]		
		[illegible] sum of $250,000 [illegible] filed		
[illegible]	[illegible]	Order [illegible] plffs. motion for amendment of certain order		
		[illegible] (N) Letts, J.		
[illegible]	[illegible]	Transcript of proceedings [illegible] 25 [illegible] filed		
[illegible]	[illegible]	[illegible] transcript of proceedings [illegible] filed		
[illegible]	[illegible]	Transcript of proceedings [illegible] Vol. [illegible] (Rep. D. Sweet) filed		
[illegible]	[illegible]	Transcript of proceedings [illegible] Vol. [illegible] 287 (Rep. D. Sweet) filed		
[illegible]	[illegible]	Transcript of proceedings [illegible] 288 [illegible] (Rep. D. Sweet) filed		
[illegible]	[illegible]	Designation of record on appeal [illegible] statement		
		[illegible] filed		
[illegible]	[illegible]	[illegible] from Chairman, Board of [illegible] enclosing		
		copy of [illegible] account [illegible] filed		
[illegible]	[illegible]	[illegible] filed (error)		
[illegible]	[illegible]	[illegible] extension [illegible] record on		
		[illegible] filed		
[illegible]	[illegible]	Order extending time to file record of appeal [illegible] 9-28 Youngdahl, J. (N)		
[illegible]	[illegible]	[illegible] filed		
[illegible]	[illegible]	[illegible] Monitors [illegible] copies [illegible]		
		[illegible] and appendix included in each copy filed		
[illegible]	[illegible]	[illegible] counter-designation of record [illegible] 8-?-58 filed		
[illegible]	[illegible]	Notice of appeal [illegible] deposit by Edward Bennett Williams,		
		$5.00 Copies mailed to [illegible] Thomas F. Dodd and		
		M. Joseph Blumenfeld filed		
[illegible]	[illegible]	Order that defs. International Brotherhood of Teamsters, Chauffeurs,		
		Warehousemen and Helpers of America pay $250.00 each into registry		
		of court in lieu of cost bond on appeal. Micro 8-16-58 Youngdahl, J. (N)		
[illegible]	[illegible]	[illegible] defs. [illegible] $250.00 [illegible] security in lieu of cost bond		
		on appeal		
[illegible]	[illegible]	Designation of Record on Appeal by def. [illegible] 9-2-58 filed		
[illegible]	[illegible]	Statement of points by def. [illegible] filed		
		(Next Page)		

CIVIL DOCKET

United States District Court for the District of Columbia

[illegible]NGHAM ENGLISH Supplemental Page No. [illegible]

Date	Proceedings	Fees	Total
[illegible]	[illegible] Rep.		
	[illegible] filed.		
	[illegible] Rep.		
	[illegible] filed.	?	
	[illegible] Rep.		
	[illegible] filed.		
	[illegible]		
	[illegible]		
	[illegible] Treasurer.		
	[illegible] filed.		
	[illegible] notwithstanding that		
	[illegible] Letts, J. (N)		
	[illegible] Teamsters		
	[illegible] English		
	[illegible]		
	[illegible]		
	Approved [illegible] Letts, J.		
	[illegible] c/m 9-10-58 filed		
	[illegible] and/		
	[illegible] instructions and		
	[illegible] 9-17-58		
	[illegible] filed.		
	[illegible] construction etc. filed.		
[illegible]	[illegible] appearance of Martin F. O'Donoghue and Patrick C. O'Donoghue		
	[illegible] filed.		
Sep. 18	[illegible] Board of Monitors on motion for construction		
	[illegible] Williams as		
	[illegible] filed.		
Sep. 19	Order extending time to [illegible] to and including 10-7-58		
	(N) Letts, J		
	[illegible]		
	[illegible] filed		
[illegible]	Motion of deft. [illegible] for removal of [illegible] Schmidt as monitor;		
	c/m 9-29-58 M.C. 9-29-58 filed		
	Memorandum of deft. #13 in response to Board of Monitors' Petition for		
	Construction, reformation and/or modification of the consent		
	order c/m 9-29-58 Exhibit [illegible] incl. filed		

CIVIL DOCKET

United States District Court for the District of Columbia

[illegible]

Memorandum of member Schmit [illegible] "Amend [illegible] petition for construction of consent order" [illegible] exhibit [illegible]

Transcript of proceedings, 9-27-58 [illegible] Fd.

Record on appeal delivered original papers-Deps. [illegible] by [illegible] Pratt, [illegible] 50¢

[illegible] of petition for construction reformation [illegible] modification of consent order. c/m 10-10-58 [illegible] Fd.

CIVIL DOCKET

United States District Court for the District of Columbia

[illegible] No. [illegible]-61-7 Supplemental Page No. 13

Proceedings	Fees	Total
[illegible] original record [illegible] is possible, and		
[illegible] be substituted		
[illegible] J.		
[illegible] Williams $8.00		
[illegible] filed.		
[illegible] Williams and Barren		
[illegible] filed.		
[illegible] C/A 10-32-		
[illegible] filed		
[illegible] construction		
[illegible] filed.		
[illegible]		
[illegible]		
[illegible] J.		
[illegible] consent [illegible] herein		
[illegible] Koniz and [illegible] J.		
[illegible] 879-80 filed		
[illegible]		
[illegible] J.		
[illegible] Koniz and		
[illegible] Letts		
[illegible] Koniz [illegible] Letts, J.		
[illegible] on expense [illegible] letter from		
[illegible] filed		
[illegible] and Dickey, and Joseph [illegible] Williamson (N/AC) filed		
[illegible] for appellant and appellee for supplemental		
[illegible] filed		
[illegible] Dorothy		
[illegible] appellant's copy filed		
[illegible]		
[illegible] John Cunningham filed		
Supplemental Record on appeal delivered [illegible] John [illegible] Pratt, 60¢		

(Over)

CIVIL DOCKET

United States District Court for the District of Columbia

[illegible]ningham [illegible] English C.A. No. [illegible] Supplemental Page No. 14

Date	Proceedings	Fees	Total
[illegible]	Copy of letter dated 12-1-58 addressed to [illegible] Secretary-Treasurer John F. English of the Teamsters International together with copy of report of expenses incurred by Board of Monitors covering period 11-17-58 thru 11-30-58 from Chairman, Board of Monitors. filed		
[illegible]	[illegible] denying [illegible] (N) Letts, C.J.		
[illegible]	Motion of John Cunningham for leave to file petition for accounting by Monitor Godfrey P. Schmidt & for suspension of Godfrey P. Schmidt from office of Monitor, and other relief; Affidavit of John Cunningham, P&A, c/m 12-1[illegible]-58. filed		
[illegible]	Notice of appearances of Joseph [illegible] Williamson and Danzansky & Dickey as attys. for John Cunningham. filed		
[illegible]	Motion of pltfs. for leave to file petition for accounting denied in chambers (order to be pre[illegible]) Letts, C. J.		
[illegible]	Order denying motion of pltf. for accounting (N) Letts, C.J.		
[illegible]	Notice of Appeal by John Cunningham. Deposit by Danzansky and Dickey. [illegible] copies mailed to Martin F. O'Donoghue, Godfrey P. Schmidt, [illegible] Wells, Edward Bennett Williams, Thomas J. Dodd and Joseph Blumenfeld. filed		
[illegible]	Bond on appeal of John Cunningham with Hartford Accident and Indemnity Co. in the sum of $250.00. Approved and filed		
[illegible]	Letter from Martin F. O'Donoghue and copy of letter and itemized list of expenses. filed.		
[illegible]	Designation of Record by John Cunningham, c/m [illegible]-59. Notice. filed		
[illegible]	Transcript of proceedings of [illegible]-58, pp. [illegible], reporter Edna B. Romig. filed.		
[illegible]	Transcript of proceedings of 11-6-58, pp. 134-284, reporter Edna B. Romig. filed.		
[illegible]	Transcript of proceedings of 11-7-58, pp. 285-391, reporter Edna B. Romig. filed.		
[illegible]	Objections of pltf. John Cunningham to proposed order of the Court construing and modifying consent decree, c/m [illegible]-9-59; exhibit A&B. filed.		
[illegible]	Order that papers entitled "objections to proposed order of the Court construing and modifying consent decree" be removed from the files and returned forthwith to the attorney for the pltf., John Cunningham. (N) Letts, C.J.		

CIVIL DOCKET

United States District Court for the District of Columbia

[illegible] S. E. et al. C. A. No. 2361-57 Supplemental Page No. 15

Proceedings	Fees	Total
Transcript of proceedings of 1-9-59 pp. 1-[illegible] Rep. Harry Kaitz. filed		
[illegible] with scheduled deposition of Godfrey [illegible] filed		
[illegible] that deft. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America pay compensation to the Board of Monitors. Letts C. J. (N)		
[illegible] of Godfrey P. Schmidt	filed	
Affidavit of Martin F. O'Donoghue [illegible]	filed	
Affidavit of Nathan Cayton	filed	
Affidavit of L. N. D. Wells, Jr.	filed	
[illegible] dated 1-19-59 from [illegible] O'Donoghue to General Secretary-Treasurer John F. English [illegible] copy of report of expenses incurred by the Board of Monitors covering 1-1-59 to 1-16-59.	filed.	
[illegible] for supplemental record	filed	
Transcript of proceedings 1-23-58, Vol. 2, pp. 3720-3797 [illegible]	filed	
[illegible] record on appeal delivered — Deposit by Raymond [illegible]		
[illegible] of original papers CA 2361-57.	filed	
[illegible] for modification of [illegible] order [illegible] -59		
[illegible] proposed [illegible]	filed	
[illegible] O'Donoghue, dated [illegible]	filed	
[illegible] conditions of [illegible] C. J. (N)		
[illegible] consent [illegible] (N)		
[illegible] transcript		
[illegible] (N)		
[illegible] delivered to [illegible] 10		
[illegible] Record	filed	
[illegible] consent order [illegible] to vacate order construing and modifying consent order or to stay order of Court pending [illegible] 2-11-59 [illegible] filed		
[illegible] for stay pending [illegible] 2-20-59 [illegible] filed		

CIVIL DOCKET

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CUNNINGHAM, et al. vs. ENGLISH et al. C.A.No.2361-57
Supplemental Page No. 15

DATE		PROCEEDINGS	FEES	TOTAL
1959 Jan	12	Transcript of proceedings of 1-9-59; pp. 1-4; Rep. Harry Kaitz. filed		
Jan	16	Proceedings in connection with scheduled deposition of Godfrey P. Schmidt. ($12.50 pd. by defts.)		
Jan	19	Order that deft., International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America pay compensation to the Board of Monitors Letts, C.J. (N)		
Jan	19	Affidavit of Godfrey P. Schmidt	filed	
Jan	19	Affidavit of Martin F. O'Donoghue; Exhibit "A"	filed	
Jan	19	Affidavit of Nathan Cayton	filed	
Jan	19	Affidavit of L. N. D. Wells, Jr.	filed	
Jan	20	Copy of letter dated 1-19-59 from Martin F. O'Donoghue to General Secretary-Treasurer John F. English and copy of report of expenses incurred by the Board of Monitors covering 1-1-59 to 1-16-59.	filed	
Jan	21	Stipulation for supplemental record	filed	
Jan	21	Transcript of proceedings 1-23-58, Vol 25, pp 3720-3239 Rep. Frye	filed	
Jan	23	Supplemental Record on Appeal Delivered - Deposit by Raymond W. Bergan, atty.50¢		
Jan	23	Receipt from USCA for original papers CA 2361-57.	filed	

CIVIL DOCKET

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNNINGHAM, et al vs. ENGLISH, et al. C.A. No. 2361-57 Supplemental Page 15A

ATE		PROCEEDINGS	FEES	TOTAL
959 Jan	30	Objections of defts to Findings of Fact, Conclusions of Law and Order proposed by the Chairman of the Board of Monitors; c/m 1-30-59.		
Jan	30	Additional findings of fact proposed by defts; c/m	filed	
Feb	3	Letter to Clerk, U.S. Districk Court from Martin F. O'Donoghue, dated 2-2-59; Exhibits "A" and "B".	filed	
Feb	9	Findings of Fact and Conclusions of Law Letts,C.J.(N)		
Feb	9	Order construing and modifying consent decree. Letts,C.J.(N)		
Feb	9	Order directing Clerk to prepare, certify, and submit a transcript of record to USCA for D.C. Circuit. McGuire,J. (N)		
Feb	9	Record on Appeal Delivered to USCA. Deposit by Robert F. Rolnick $1.10		
Feb	9	Receipt from USCA for Original Record.	filed	
Feb	11	Motion of pltff. #1 to vacate consent order or to vacate order construing and modifying consent order or to stay order of Court pending appeal; P&A; c/m 2-11-59. M.C.2-11-59 filed		
Feb	20	Motion of defts for stay pending appeal; c/m 2-20-59; P&A filed		
Feb	25	Answer of Martin F. O'Donoghue, Chairman, Board of Monitors, to motion for stay pending appeal; c/s 2-25-59 filed		

CIVIL DOCKET

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNNINGHAM et al. vs. ENGLISH et al. C.A.NO. 2361-57 SUPPLEMENTAL PAGE 16

DATE		PROCEEDINGS	FEES	TOTAL
959 Feb	28	Letter from Martin F. O'Donoghue, Board of Monitors. filed		
Mar	4	Notice of appeal by defts; deposit by Williams, $5.00 (copies mailed to Martin F. O'Donoghue, Godfrey P. Schmidt, L.N.D.Wells, Jr. & Danzansky & Dickey. filed		
Mar	4	Cost bond on appeal of defts. with The Travelers Indemnity Co. in the sum of $250.00 approved & filed		
Mar	3	Memorandum denying defts.' motion for an order staying order of this Court entered on 2-9-59. Letts, C.J. (N)		
Mar	3	Memorandum denying, without oral hearing, motion of John Cunningham to vacate consent order or to vacate order construing and modifying consent order or to stay order of Court pending appeal. Letts, C.J. (N)		
Mar	4	Preliminary record on appeal delivered to U.S.C.A.; deposit by Williams .80¢/ filed		
Mar	4	Receipt from U.S.C.A. for original papers. (Prelim.record.) filed		
Mar	5	Motion of Anthony Distinti, Individually and as President of Local #277, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Robert J. Coar, Individually and as President of Highway and Local Motor Freight Drivers, Dockmen and Helpers Local Union #701, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, William E. McKernan, individually and as Secretary-Treasurer of Local Union #617, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Jack Kaiser, Sam Leffler, Harold August, Philip Conlin, Harry Gold, Saul Cohen, George Carlo, Dolores Ramos, Albert Mansi, Jack Alesi, Edward Frank, John J. Derrico, Stanley Wolfe, Daniel Brandt, Everett Price, Joseph Rashey,		

~~CIVIL DOCKET~~

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CUNNINGHAM et al. vs. ENGLISH et al. C.A.No. 2361-57 Supplemental Page 16A

DATE		PROCEEDINGS	FEES	TOTAL
		Leroy Jones, Frank Braza, Ralph Murray, Jerome Ernst, Robert Randolph, Harry Morris, Lester Lervis, Frank Smith, Charles J. Sprague, George Swift, Joseph Marriott, Robert Walker, Joe Burton for leave to intervene under Rule 24 of the Federal Rules of Civil Procedure; appearance of Joseph M. Williamson 100 South Bennett Ave., Urbana, Ill. and Danzansky and Dickey for applicants; notice; c/m 3-5-59; P&A; exhibits A,B,C; deposit by Danzansky & Dickey,$5.00; M.C. filed.		
ar	5	Order denying motion by John Cunningham to vacate consent order, etc. (next page) (M) Letts,C.J.		

SEP 19 1957

United States District Court

For the District of Columbia

JOHN CUNNINGHAM, THOMAS C. MANNING, FRANK KENNEDY, ANDREW BOGGIA, GEORGE BECKER, JOSEPH MOLLOY, JOHN MCMANUS, HAROLD WILL, STEVE MILONE, JOHN MCGLYNN, EDWARD MCFARLAND, JOHN OLSEN and HOBART GALE,

Plaintiffs,

against

JOHN F. ENGLISH, individually and as General Secretary-Treasurer of INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, DAVE BECK, DANIEL J. MURPHY, JOHN J. CONLIN, SIDNEY L. BRENNAN, JOHN T. O'BRIEN, FRANK BREWSTER, WILLIAM A. LEE, JOSEPH DIVINY, JAMES R. HOFFA, EINAR MOHN, HARRY TEVIS and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Defendants.

Amended

Complaint

CIVIL ACTION #

This complaint alleges class actions (a) in conspiracy among union officers and their agents to deprive members of rights and property under the Union Constitution and (b) in contract for violation of Union Constitution by officers and their agents; it prays for relief enjoining defendants and their agents from further violation of the Union Constitution and it seeks appointment of a master in equity to conduct fair union elections as the Union Constitution requires.

Plaintiffs, complaining of defendants herein by Dodd, Kaplan & Schmidt, their attorneys, allege:

FOR A FIRST SEPARATE AND DISTINCT CLAIM OR CAUSE OF ACTION

1. This Court has jurisdiction over this claim or cause of action under Section 1332 of Title 28 of the United States Code entitled "Judiciary and Judicial Procedure" and under Section 301 (c), (d) and (e), Title III of the National Labor Relations Act, as amended, and under Rule 17(b) of the Federal Rules of Civil Procedure.

2. All plaintiffs herein reside in and are citizens of the State of New York.

3. The General (or principal) Office and principal place of business of defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is 25 Louisiana Avenue, N. W., Washington 1, D. C.; and all of defendants have offices at that address and carry on their business at that address regularly or from time to time to a significant and substantial extent; and defendants and agents of defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called International Organization), are engaged in representing and acting

for employee members of the International Organization within the District of Columbia.

4. All the personal defendants herein reside in and are citizens of States other than the State of New York or they reside in the District of Columbia and are citizens of the United States.

5. The matter in controversy, as hereinafter explained, far exceeds the sum or value of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs.

6. Plaintiff, John Cunningham, resides in the County of Queens, City and State of New York, and is a citizen of that State. He is a member in good standing of *Milk Wagon Drivers and Delivery Employees Local 584,* which is a local union and "subordinate body" of defendant, International Organization.

7. Plaintiff, Thomas C. Manning, resides in the County of The Bronx, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 584.*

8. Plaintiff, Frank Kennedy, resides in the County of The Bronx, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 584.*

9. Plaintiff, Andrew Boggia, resides in the County of Queens, City and State of New York, and is a citizen of that State. He is a member in good standing of *Building Material Teamsters Local 282,* which is a local union and "subordinate body" of the International Organization.

10. Plaintiff, George Becker, resides in the County of Kings, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 282.*

11. Plaintiff, John McGlynn, resides in the County of Kings, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 282.*

12. Plaintiff, Edward McFarland, resides in the County of Queens, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 282.*

13. Plaintiff, Joseph Molloy, resides in the County of The Bronx, City and State of New York, and is a citizen of that State. He is a member in good standing of *Express Drivers, Chauffeurs and Helpers Local 808,* which is a local union and "subordinate body" of defendant, International Organization.

14. Plaintiff, John McManus, resides in the County of Queens, City and State of New York and is a citizen of that State. He is a member in good standing of the aforesaid *Local 808.*

15. Plaintiff, Harold Will, resides in the County of Queens, City and State of New York and is a citizen of that State. He is a member in good standing of the aforesaid *Local 808.*

16. Plaintiff, Steve Milone, resides in the County of New York, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 808.*

17. Plaintiff, John Olsen, resides in the County of Kings, City and State of New York, and is a citizen of that State. He is a mem-

ber in good standing of *Merchandise Drivers Local 641,* which is a local union and "subordinate body" of defendant, International Organization.

18. Plaintiff, Hobart Gale, resides in the County of Sullivan, State of New York, and is a citizen of that State. He is a member in good standing of *Dairy Transportation Drivers, Helpers and Teamsters Employees, Northern New York and Surrounding Areas, Local 770,* which is a local union and "subordinate body" of defendant, International Organization. 770

Sham 19. Plaintiffs bring this action for themselves and for all other members (so numerous as to make it impracticable to bring them all before the Court) of the International Organization and its "subordinate bodies" similarly situated; and there are common questions of law and of fact affecting their several rights; and a common relief is sought herein; and the object of the action is the adjudication of claims which do or may affect specific property as hereinafter specified also involved in this action; and this class action is authorized by Rule 23 of the Federal Rules of Civil Procedure. ✓

20. Defendant, International Organization, is an unincorporated association and a labor union within the meaning of state and federal laws. It comprises 891 local unions and many other "subordinate bodies" including Conferences and Joint Councils throughout the United States and Canada, all with a membership in excess of 1,500,000 workers.

21. At all of the times hereinafter mentioned, defendant, Dave Beck, was and still is General President and a member of the General Executive Board of the International Organization. He resides in the State of Washington and is a citizen of that State.

22. At all of the times hereinafter mentioned, defendant, John F. English, was and still is General Secretary-Treasurer and a member of the General Executive Board of the International Organization. He resides in the District of Columbia and is a citizen of the United States.

23. At all of the times hereinafter mentioned, defendant, Daniel J. Murphy, was and still is First Vice-President and a member of the General Executive Board of the International Organization. He resides in and is a citizen of the State of Missouri. ?

24. At all of the times hereinafter mentioned, defendant, John J. Conlin, was and still is Second Vice-President of the International Organization and a member of the General Executive Board thereof. He resides in and is a citizen of the State of New Jersey.

25. At all of the times hereinafter mentioned, defendant, Sidney L. Brennan, was and still is Third Vice-President of the International Organization and a member of the General Executive Board thereof. He resides in and is a citizen of the State of Minnesota.

26. At all of the times hereinafter mentioned, defendant, John T. O'Brien, was and still is Fourth Vice-President of the International

Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Illinois.

27. At all of the times hereinafter mentioned, defendant, Frank Brewster, was and still is Fifth Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Washington.

28. At all of the times hereinafter mentioned, defendant, William A. Lee, was and still is Seventh Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Illinois.

29. At all of the times hereinafter mentioned, defendant, Joseph Diviny, was and still is the Eighth Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of California.

30. At all of the times hereinafter mentioned, defendant, James R. Hoffa, was and still is a Ninth Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Michigan.

31. At all of the times hereinafter mentioned, defendant, Einar Mohn, was and still is Tenth Vice-President of the International Organization and a member of its General Executive Board. He resides in the District of Columbia and is a citizen of the United States.

32. At all of the times hereinafter mentioned, defendant, Harry Tevis, was and still is Eleventh Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Pennsylvania.

33. At all of the times hereinafter mentioned, one Thomas J. Hickey was and still is Sixth Vice-President of the International Organization and a member of its General Executive Board.

34. At all of the times hereinafter mentioned, defendant, International Organization, had, and purports to act under, a Constitution which, in law, constitutes a contract obligating the members and officers, the joint councils and local unions thereof, as well as plaintiffs and defendants in this action. A copy of said Constitution is hereto annexed and marked *Exhibit A* to form part of this complaint. Under said Constitution, plaintiffs and all other members of the International Organization are granted certain rights, among which is the right (which cannot be exercised because of the conduct of defendants as hereinafter alleged) to a remedy for the intolerable situation and lawless or irresponsible conduct hereinafter described; and said Constitution imposes certain duties upon defendants with respect to their administration of the business and affairs of the International Organization; which duties defendants, as hereinafter appears, repudiated or failed to perform.

35. Defendant, International Organization, and its members are parties to the AFL-CIO Constitution, which also constitutes, in law, a contract obligation upon defendants and a source of rights (violated,

4

as hereinafter appears) of plaintiffs; but such rights are unimplemented with effective procedures or remedies for their enforcement. A copy of said AFL-CIO Constitution is hereto annexed, marked Exhibit B, to form part of this complaint.

36. Purporting to act as members of the General Executive Board of the International Organization, defendants have fixed Miami, Florida, as the place and the period from September 29th to October 5th, 1957, as the time for a National Convention of the International Organization over which defendant Beck will preside; and purporting to act under the Constitution of the International Organization, defendants have arranged that at said National Convention an election of officers of the International Organization, including the General President of said International Organization, shall take place.

37. With respect to the election of delegates and alternates to said Convention, the Constitution of the International Organization, Section 5 thereof, provides in part as follows:

> "All delegates to the international convention shall be selected by vote at a regular meeting of the local union, or such delegates may be appointed by the Executive Board of the local union if so authorized by a vote of the local union membership at a regular meeting. * * *"

38. According to the "Roster of Local Unions with Addresses of Secretaries" published by the International Organization during the incumbency of defendants, there are at present affiliated with said International Organization some 891 local unions.

X

39. To the knowledge, and with the encouragement or tolerance, of defendants, and in violation of said Constitution, more than 50% of the local unions purporting or planning to send delegates to said National Convention have failed to conduct any regular meetings or elections (a) for the purpose of selecting delegates to attend said Convention, or (b) for the purpose of authorizing their respective Executive Boards to appoint delegates to said National Convention; and more than 80% of the delegates planning to attend said National Convention have been hand-picked by or with the tolerance or connivance of defendants or of persons in concert with defendants and in violation of Article I, Section 5, of the International Organization's Constitution (herein sometimes called the IBT Constitution) in that they have not been appointed or selected pursuant to votes of membership at regular local meetings as required by said Constitution, nor, indeed, by any vote at any meeting of the local unions involved.

[illegible]

[illegible]

X

40. Anticipating said Convention and election, defendants and those in concert with them have become active participants in or have, in violation of the IBT Constitution, furthered or tolerated a common effort or conspiracy to rig or improperly influence the said Convention election and to prearrange its outcome by fraud, deception or strategem, as well as by intimidation, coercion or threats and by other irregularity as hereinafter set forth; for the ultimate purpose of controlling or influencing the International Organization for their own selfish, unconstitutional, illegal objectives; for the purpose (among others) of electing defendant, James R. Hoffa, as General President of the Inter-

[illegible]

national Organization; for the further purpose (among others) of electing defendant, Dave Beck, as General President Emeritus, with lifetime tenure and with salary equal to the salary presently paid to him; and for the purpose of controlling for their own ends the International Organization's vast treasury.

what evidence that Beck wants to be elected Pres Em

41. As part of the aforesaid conspiracy or common effort, defendants, or some of them, and those in concert with them, in violation of the IBT Constitution, have, for their own selfish purposes and to perpetuate and increase their own power, controlled the selection of delegates to said Convention by divers means, as hereinafter described; and, in part, defendants have executed their plan by instituting trusteeship proceedings against locals intractable to their designs which they disfranchised because said locals could not be controlled by defendants for their own purposes or by unduly instituting or continuing trusteeships with respect to unions which defendants could not control or influence to their purposes—all in violation of the IBT Constitution.

X

42. Defendants, or most of them, and those in concert with them have perpetuated themselves in office over long periods of time by their control over delegates to national conventions in violation of the IBT Constitution; and they propose by their said conspiracy or common effort further to perpetuate themselves in office by rigging the election at the aforesaid Convention.

43. Defendants and those in concert with them have planned and perpetrated or have tolerated, within the International Organization and within its "subordinate bodies", many and serious violations of law and of the IBT Constitution and many flagrant irregularities which are also violations of the AFL-CIO Constitution and of the AFL-CIO Codes of Ethical Practices, to wit:

(1) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, the membership of hundreds of locals and "subordinate bodies" affiliated with the International Organization have not enjoyed democratic procedures or industrial democracy such as the IBT Constitution and the AFL-CIO Constitution require. Instead, they were submitted to the domination of dictatorial leaders, who, with the encouragement, connivance or permission of defendants, imposed themselves on local union membership, or imposed leaders whose only or chief purpose was money or power or both; many of whom are gangsters, racketeers, extortionists and persons of other ill repute, who permit no regular or free elections within the said locals; who control the funds of said locals without accountings and without even the rudiments of any honest bookkeeping system; and who otherwise flagrantly violated the IBT Constitution as well as sound trade union practices.

Inform

(2) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, trusteeships, whether originally instituted properly or not, were established or continued for the purpose of controlling the locals and funds under trusteeship and of dominating the delegates who would attend international conventions from such locals with the result and intention of disfranchising the members of more than one hundred locals. Moreover, defendants or those in concert with them select delegates from or for trusteed local

Inform

unions and permit them to vote at national conventions in violation of the IBT Constitution, having selected them to perpetuate their own office and power. For example, defendant Hoffa today controls many local unions and some 45,000 members of the International Organization by such trusteeships; and all such members are thus, in violation of the IBT Constitution, effectively disfranchised and submitted to the will of Hoffa and defendants.

paper locals
Open

(3) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, officers of many local unions and defendants have frequently and notoriously associated and consorted with gangsters, racketeers, extortioners and persons of other ill repute to whom defendants yielded or sold charters and who brought upon said locals and the International Organization public odium. Thus, defendants and other union officers in concert with them failed to represent in proper fashion the members of said International Organization whose dues and assessments made possible the functioning of said Organization and the payment of large salaries and expenses (often not accounted for) to defendants.

Open

(4) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, defendants failed or refused to revoke the membership of officers and members of local unions and of the International Organization and of its "subordinate bodies" when such officers and members were found guilty of crime; all in flagrant violation of Section 13, Article XVIII of the International Organization's Constitution. has local union taken action under this Section

(5) By misfeasance, malfeasance or nonfeasance, defendants failed or refused to enforce and apply in good faith the objects of the IBT Constitution.

Open

(6) By misfeasance, malfeasance or nonfeasance, defendants failed or refused to enforce or comply with Section 4, Article II of said IBT Constitution with respect to the eligibility of candidates for office.

(7) By misfeasance, malfeasance or nonfeasance, defendants and those in concert with them failed or refused to respect the jurisdiction of legitimate local unions affiliated with the International Organization in order to consolidate their own power or to play favorites with those who aided or abetted defendants in their unconstitutional plans or wishes.

Open

(8) By misfeasance, malfeasance or nonfeasance, defendants failed or refused to act on charges, petitions and complaints presented to them pursuant to the IBT Constitution even where such formal documents called attention to widespread and serious violation of the IBT Constitution by members, officers, joint councils and local unions affilated with the International Organization.

(9) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, defendant, Dave Beck, as part of the aforesaid common effort or conspiracy, failed or refused to exercise his administrative and judicial powers honestly and in good faith to prevent or to remedy violations of the IBT Constitution even when such violations deprived members and "subordinate bodies" affiliated with the International Organization of important rights under said Constitution or under law.

(10) By misfeasance, malfeasance or nonfeasance, defendants failed or refused, as did those in concert with them, to conduct just and honest trials or to process charges against members, locals, joint councils and officers pursuant to Section 6 of Article XVIII of the International Organization's Constitution; thus consolidating defendants' power over irresponsible officers spared in this way from trial.

(11) By misfeasance, malfeasance or nonfeasance, defendants and those in concert with them organized or participated in the organization or permitted the organization, in violation of the IBT Constitution and of the rights of members and "subordinate bodies", of certain fraudulent locals for the purpose of rigging the election conducted by Joint Council 16 on February 14th, 1956, and for the purpose of consolidating defendants' power and of depriving members and "subordinate bodies" of their rights to honest elections and to representation of their own choice—said fraudulent locals being locals numbered 258, 269, 284, 295, 362, 651 and 275.

Sham

Show [illegible] by defts

(12) By misfeasance, malfeasance or nonfeasance, defendants and those in league with them planned and prearranged or tolerated the prearrangement of the election of defendant, James R. Hoffa, as General President and the election of defendant, Dave Beck, as General President Emeritus, said concert having been planned and determined in part at least in secret conclave attended by all or most of defendants and persons in concert with them within the last two months.

Sham-

(13) By misfeasance, malfeasance or nonfeasance, defendants and those in concert with them have approved or permitted dictatorial officers of local unions affiliated with the International Organization; officers convicted of serious crime involving their stewardship as such officers (for example, the case of Local 445 and its two principal officers, Stickles and Massiello, who had been convicted and sentenced to Leavenworth for a term of five years for conspiracy to extort $64,000 from eight employers); officers who refuse to permit elections; officers who raid union treasuries; officers who refuse memberships financial accountings; officers who keep no or inadequate financial records; officers who, acting with divided loyalties, engage in private business ventures with union funds; officers who withdraw from union treasuries large expense items without vouchers; and officers who otherwise violate the IBT Constitution and the AFL-CIO Constitution in serious matters. ✓

have you complained about this

(14) By misfeasance, malfeasance or nonfeasance, defendants, particularly defendants Beck, Hoffa, Brennan and Brewster have themselves used union funds in violation of law, common honesty, the IBT Constitution and the AFL-CIO Constitution for their own private gain and used their position as union officials for selfish purposes, all to consolidate their own power and influence.

What big union funds does Hoffa used in violation law?

(15) By misfeasance, malfeasance or nonfeasance, defendants and those in concert with them visited reprisals upon members or officers of "subordinate bodies" when such members or officers stood in the way of purposes or plans of defendants or those in concert with them.

Sham

(16) To consolidate their power and influence, defendants or some of them with the connivance of others made compacts or deals with racketeers and racketeer-controlled unions or non-existent or conveniently contrived organizations labelled "unions" to the detriment of the membership of the International Organization and in violation of the purposes and provisions of its Constitution.

which locals

What got to with corruption

(17) By misfeasance, malfeasance or nonfeasance, defendants or some of them or those in concert with them concluded "sweetheart" contracts with favorite employers or they tolerated or connived at corrupt arrangements with employers or they refused to apply, impartially and honestly, labor union contracts, objectives and methods to business operations conducted by defendants or by some of them or by their friends because their own personal gain or the gain of members of their families or friends closely associated with them were involved.

Ifem

(18) Defendants or some of them with the connivance of the others, in violation of the International Organization's Constitution, and for the consolidation of their own power or influence, concluded back-door agreements with labor union of ill-repute such as the ILA and the United Automobile Workers, AFL.

What does he mean

(19) In violation of the IBT Constitution, defendants or some of them with the connivance of the others used or permitted tactics of threats, coercion and other lawlessness for the accomplishment of the purposes of defendants and of those in concert with them. ?

What got to do with corruption

(20) Because of the misfeasance, malfeasance and nonfeasance of defendants, there were frequent borrowings of substantial sums of money from employers or from persons representing employers or identified in interest with employers in cases where these very employers are required to or do bargain collectively with the same union officials (including defendants. especially Hoffa, Beck, Brewster and Brennan) who borrow the money.

even make corrupt?!

(21) In case where the International Organization or its "subordinate bodies" sponsored or promoted real estate developments allegedly for the benefit of rank-and-file membership or for some other alleged union purpose, there were, because of defendants' misfeasance, malfeasance or nonfeasance, frequent and substantial borrowings of money by union officials (including defendants, especially Hoffa, Brewster, Beck and Brennan) from real estate promoters or agents as to whom the said union-official borrowers are, in effect, principals.

" (22) Defendants and officials in concert with them used their official position and the fact that large sums of union monies were on deposit with particular banks for the purpose of influencing those banks to lend money to friends of defendants or to union leaders or to persons in concert with them or for some other selfish purpose which violates the IBT Constitution and the AFL-CIO Constitution.

" (23) Acquisition by union officials (including defendants, especially Hoffa, Beck, Brewster and Brennan) by means of union funds or on the basis of union position or options to buy real or personal property or interest in developments or ventures, the success of which depended upon purchases by rank-and-file members or by persons subject to the control and domination of those thus acquiring the option.

" (24) Acceptance of kick-backs, disguised as loans or in other ways, from accountants, auditors and others doing business with unions who derive income from the International Organization or its "subordinate bodies", where the discretion to pay or finance such income out of union funds rests with the very union officials receiving such kick-backs, all of which occurred because of defendants' misfeasance, malfeasance or nonfeasance.

(25) Substantial personal borrowings of money by union officials (including defendants, especially Hoffa, Beck, Brewster and Brennan) from accountants, auditors and others doing business with "subordinate bodies" where the union officials who borrow such monies control the hiring or tenure of such accountants, auditors or others, as a result of defendants' misfeasance, malfeasance or nonfeasance.

what to do with [illegible]

(26) Borrowing of union monies from union treasuries by union officials (including defendants, especially Hoffa, Beck, Brewster and Brennan) without security, without interest and without the knowledge of the membership, but with the encouragement, participation, or toleration of the misfeasant, malfeasant or non-feasant defendants.

(27) Borrowings of substantial sums of money by union officials (including defendants, especially Hoffa, Beck, Brewster and Brennan) from business agents of the International Organization or its "subordinate bodies" where the job tenure of said business agents depend upon the good will of the borrower, with the encouragement, participation, or toleration of the misfeasant, malfeasant, or nonfeasant defendants.

?

(28) The lending of substantial sums of union money by defendants or those in concert with them or those tolerated by them for race track operations or for gifts to friends or associates or for the purchase of assets from notorious gangsters or mobsters, with the result or intention of consolidating defendants' power or influence.

(29) Creation by defendants, or by those in concert with them, of corporations or other business entities or devices using in connection with them union funds "borrowed" or embezzled to finance the personal aggrandizement of those who, as officials of the International Organization or its "subordinate bodies", control such union funds.

2 from

(30) Donation of union dues money and union funds by defendants or some of them or by those in concert with them, or by union officials without protest from but with the knowledge of some or all of the defendants, to promote election campaigns ~~within locals or "sub-~~ ordinate bodies" of the International Organization for the purpose of building the personal power and strength of defendants or those in concert with them and for the purpose of putting in union office persons friendly to defendants or congenial to their grab for power.

1 from

(31) The lending of monies or the donation of monies to employers or employers' groups in return for various favors from such employers or employers' groups, thus creating or indulging serious conflict of interest.

(32) Borrowings by defendants or by those in concert with them from persons, firms or corporations whose primary interests or associations are with employing truckers, with the result or intention of consolidating defendants' power or influence.

What mean?

(33) Use of union funds in accordance with the unfettered discretion and pursuant to the calculated domination of defendants and those in concert with them for the purpose of assuring their own reelection and their perpetuation in power as labor union officials.

?Same

(34) Use by defendants or those in concert with them of their high union office for lending, borrowing or advancing money to defendants or to friends or associates of defendants for the consolidation of the power or influence of the misfeasant, malfeasant or nonfeasant defendants or some of them.

(35) Employment of friendly labor consultants who advise managements and participation in their fees where such employment results in "favored nation" treatment; or acquisition of other income or emoluments as a direct or indirect result of the use of such friendly labor consultants.

(36) Frequent use of dummies for the purpose of masking financial transactions involving union funds or irresponsible union stewardship in which defendants or those associated with them are interested.

(37) Use of high union office by defendants or those associated with them or use of union funds for business transactions which exemplify conflicts of interest, violation of fiduciary relationships and irresponsible stewardship of union affairs or funds.

(38) Use of union influence and power by defendants or those associated with them for the purpose of skyrocketing or parlaying small original investments into large net profits for the personal enrichment of defendants, their relatives, friends or associates.

What depts.

(39) Participation by (defendants) and those associated with them in various business dealings characterized by conflict of interest between sound trade union objectives and the ambition of defendants and those associated with them for power or money to the serious neglect of union interest and affairs.

What depts

(40) Use of union position, influence and power by defendants and those in concert with them with insurance companies or brokers receiving large premiums from unions under their control in order to obtain special favors for themselves or their friends from such insurance companies.

What to do with investors

(41) Acquisition of stock interests or stock ownerships where such acquisition or the continuance of possession of such stock by defendants or those associated with them raises or implies conflicts of interest between defendants and those associated with them in their personal capacity and defendants and those associated with them as union officials.

Did local do anything ?

(42) Appointment by defendants or by those associated with them of criminals to positions of authority within the International Organization or its "subordinate bodies" or the toleration of such criminals ~~in high office~~ without protest or challenge under the IBT Constitution for the consolidation of defendants' power or influence.

(43) Fraudulent use of the device of trusteeship under the IBT Constitution for the purpose of the aggrandizement of defendants or those associated with them and for the purpose of perpetuating them in power.

(44) The perpetration or toleration without protest of many intra-union abuses in the exercise by defendants of dictatorial and irresponsible power in violation of the IBT Constitution.

44. The sections of the IBT Constitution which have been flagrantly violated by the abuses and practices hereinabove set forth are the following:

(1) *Article I, section 2,* which defines the objects of the International Organization, objects which have been substantially nullified or obstructed by defendants or those in concert with them.

2

(2) *Article II, section 1,* which deals with International Organization's jurisdiction, and to which defendants and those in concert with them have paid no attention in egregious cases.

(3) *Article II, Section 2,* which requires that members shall be persons of good moral character and shall be persons who are either citizens of the United States or persons who have declared their intention to become citizens. Some of the persons tolerated in power by defendants are not citizens and many of them are not persons of good moral character. (who is judge of good moral character)

(4) *Article II, section 4,* which prescribes rules for eligibility for election to any office of a local union or of the International Organization. In instances where it served the ulterior purposes of defendants and those in concert with them, these rules of eligibility have been callously disregarded.

X

(5) *Article III, section 5,* which prescribes the election of delegates and alternates. Defendants have violated or tolerated the violation of this section, as aforesaid; a large number of Teamster unions are being denied their rights to send delegates to the International Organization's Convention in Miami; a larger number of delegates have not been properly elected, or appointed by properly authorized executive boards; and the basis for representation and the requisites for representation under the IBT Constitution have been disregarded.

who are delegates

(6) *Article III, section 6,* which prescribes the credentials entitling delegates to seating in the Convention. For the reasons hereinabove set forth, many delegates with improper or false credentials have been named as such by "subordinate bodies" and threaten, unless enjoined by this Court, to vote upon the basis of such credentials at the national election. ✓

(7) *Article III, section 7,* which provides for the appointment by the General President of a Committee on Credentials. Since the General President is a member of the conspiracy or common effort aforesaid, his and his appointees' administration of this section at the next Convention promises to be a mere device for the advancement of the aforesaid conspiracy or common effort.

(8) *Article IV, section 2,* concerns the election of officers and delegates and, among other things, requires that all nominations for International offices shall be made in open convention. Actually, the nominations for the forthcoming Miami Convention have already been made by defendants and others as part of the conspiracy or common effort aforesaid.

(9) *Article V, section 1,* limits the salary of the General President to $50,000 a year; but he has improperly appropriated far more than $50,000 a year in the course of his incumbency as General President.

2

(10) *Article V, section 2,* requires honest and reasonable disbursements for travel, a prescription which has been violated seriously by defendants and their friends.

(11) *Article VI, section 1(b),* requires that the General President shall conduct the affairs of the International Organization "in accordance with the Constitution", which he has utterly failed to do.

(12) *Article VI, section 1(c),* requires that the General President shall devote his entire time to the service of the International Brotherhood. In fact, defendant Beck has devoted substantial portions of his time to private business ventures and to dishonest and unlawful ventures, conspiracies or common efforts for his own personal aggrandizement and power or wealth or both, using for this purpose his prestige as General President.

(13) *Article VI, section 1(h),* requires referendum votes of the membership of local unions in respect to questions or situations where the vote of the membership is required under the Constitution or under the Constitution and By-Laws of the local union involved. Actually, defendant Beck, as General President, and the other defendants have failed to discharge this duty or have tolerated the dishonest and fraudulent discharge of this duty where it served their purposes to do so.

(14) *Article VI, section 2,* vests certain judicial powers in the General President. In fact, defendant Beck, as General President, has dishonestly and discriminatorily discharged these powers in important respects for the purpose of perpetuating himself and those in concert with him in power; and he has been guilty of serious misfeasance, malfeasance and nonfeasance with respect to such judicial powers.

(15) *Article VI, section 4,* requires the General President to determine whether existing strikes are subject to strike benefits as provided by the Constitution. The General President has used this power only for the purpose of strengthening those in concert with him and those who have aided him in the conspiracy or common effort aforesaid and to badger, harass or discourage those who were unsympathetic with his objectives of perpetuation in power and personal self-aggrandizement.

(16) *Article VI, section 6,* defines the power of the General President to appoint trustees and imposes the duties and obligations of locals under trusteeship; whereas the General President and the other defendants, in violation of this section of the Constitution, have used trusteeships to disfranchise members and "subordinate bodies" and to perpetuate themselves and those in concert with them in power and for the purposes of their own aggrandizement in wealth or power.

(17) *Article VII, section 3,* concerns the issuance of charters and the charter contract. Defendants have made or tolerated use of charters in violation of the IBT Constitution for the purposes of advancing the conspiracy or common effort aforesaid.

(18) *Article VII, section 4,* concerns financial reports. Defendants have participated in the preparation of dishonest reports or have tolerated the issuance of dishonest reports and in violation of their duties as officials of the International Organization.

13

(19) *Article VII, section 6,* concerns the finances of the International Organization. Defendants have, by dishonest or irresponsible handling of such finances, treated such finances as their own personal property.

(20) *Article IX* concerns the duties and powers of the General Executive Board. Said Board and defendants who control it were guilty of serious acts of misfeasance, malfeasance and nonfeasance under this Article in that: they participated in the conspiracy or common effort aforesaid, or tolerated the conduct of the conspirators or cooperators without protest; they had knowledge of the abuses, criminality, irresponsibility and irregularities rampant in "subordinate bodies" of the International Organization and took no steps to correct them; they knew that many local unions have not held elections in years; they knew that members who dared to run against officials approved by defendants, or those in concert with them, have been fined, locked out of meetings, intimidated or made the victims of violence or other reprisals; they knew that large sums of union dues and assessments, which should go into the treasuries of the International Organization or of its "subordinate bodies", disappear or are embezzled under the label or form of "expenses" or "miscellaneous disbursements" or by some other dodge, or they simply disappear with no accounting of any kind to union members or to anyone else; they knew that members who protest about union affairs within the International Organization receive threats addressed to themselves and to their families, or such protesting members are the actual victims of beatings, coercions, violence and intimidation; they knew that many union officers within the International Organization have ignored complaints about working conditions and have received payoffs from employers for their cooperation; they knew that businessmen often have to pay shake-down money to union bosses within the International Organization or be faced with strikes, wage demands or other economic reprisals which would have the effect of driving the businessmen to corrupt practices like bribery or to expensive and futile litigation or to bankruptcy or discontinuance of business; they knew that local unions within the International Organization are often controlled by gangsters, racketeers, criminals and extortioners and that many union officials within the International Organization have working alliances with racketeers or with corrupt employers; and they knew that, although the IBT Constitution calls for the trial of persons guilty of such derelictions, such trials are altogether neglected or avoided in most cases, or (where they are conducted) they are fraudulently and dishonestly conducted so as to acquit defendants or those in concert with them against all the evidence.

Idem

(21) *Article X, section 7,* requires that defendants, as top officials of the International Organization, should be familiar with the activities of local unions by means of reports furnished by such local unions to the International Organization. Defendants have been guilty of misfeasance, malfeasance and nonfeasance in this respect by not requiring or by overlooking many such reports.

What reports

(22) *Article X, section 8,* requires that local secretary-treasurers, business representatives and others who handle funds and property of local unions affiliated with the International Organization shall be covered by suitable surety bonds. Defendants were guilty in this respect of nonfeasance, malfeasance and misfeasance to the financial loss of the membership of the locals and the International Organization.

What locals had no surety bonds

(23) *Article X, sections 9, 10 and 11,* make provisions for the filing of monthly audits by trustees, for the deposit of money and for the audit of books of local unions. Defendants have been guilty of serious misfeasance, nonfeasance or malfeasance in these respects to the great financial loss of the honest membership of the International Organization and its "subordinate bodies".

What to do with money

(24) *Article XI* establishes and defines the duties of the Finance Committee and the powers of the General Executive Board to make loans or advances. Defendants, some of whom constitute said Committee and the General Executive Board, have been guilty in these respects of serious misfeasances, nonfeasances and malfeasances, to the great financial loss of the honest membership of the International Organization and of its "subordinate bodies".

(25) *Article XII, section 12,* makes provision for disputes respecting jurisdiction. Defendants have, in important cases, been guilty of misfeasance, malfeasance and nonfeasance in this respect and have used their powers over union jurisdiction for the perpetuation of themselves and those in concert with them in office or for their own selfish aggrandizement.

(26) *Article XV* concerns the formation of joint councils, the judicial powers of such joint councils and the representation and by-laws of such joint councils. Defendants have been guilty of misfeasance, nonfeasance or malfeasance in connection with the establishment or control of joint councils for their own selfish aggrandizement and for the purpose of advancing the conspiracy or common effort aforesaid.

(27) *Article XVIII* concerns trials and appeals and the procedure for the trial of local officers and members. Defendants have been guilty of misfeasance, malfeasance or nonfeasance in these respects and have failed to conduct trials and appeals, or have conducted them dishonestly and fraudulently for the purpose of advancing the aforesaid conspiracy or common effort; they have failed to bring charges against notoriously guilty members, joint councils, locals and officers, as justice, fair dealing and sound trade unionism required; and defendants have tolerated or participated in the violation of specific provisions of the Constitution and have participated in or tolerated the failure by themselves and their subordinates to perform duties here specified in said Constitution; they have tolerated, or participated in, the violation of the oath of loyalty taken by members or officers of the local unions and to the International Organization, as well as violations of oaths of office; they have condoned gross disloyalty and conduct unbecoming the members of any decent trade union, especially when defendants or other high officials of the International Organization have been guilty of such gross disloyalty and conduct; they have condoned gross inefficiency, which hindered or impaired the interests of the locals and of the International Organization, especially when those guilty of such inefficiency were friendly to or sympathetic with defendants or were part of the conspiracy or common effort aforesaid; they have condoned misappropriation of union funds within the International Organization; they were themselves guilty of activities which tended to bring the locals or the International into disrepute, especially defendants Hoffa, Beck, Brennan and Brewster; they were responsible for acts and conduct inconsistent with the duties, obligations and

fealty of or to members of trade unions, acts and conduct in violation of sound trade union principles; and before the McClellan Select Subcommittee of the United States Senate some of them and some of their associates had frequent recourse to the privilege against self-incrimination under the Fifth Amendment along with known gangsters, racketeers and corrupt labor union leaders within the International Organization; and defendants and those in concert with them failed or refused to revoke the membership of officials or members who were found guilty of crime where such revocation is required by Article XVIII, Section 13, of the IBT Constitution.

(28) *Article XXI* provides for the establishment and conduct of business by local unions. Defendants and those in concert with them have been guilty of serious misfeasance, malfeasance or nonfeasance in office respecting this Article.

(29) *Article XXII* defines the duties of local secretary-treasurers. Defendants and those in concert with them have been guilty of misfeasance, malfeasance and nonfeasance in office respecting this Article.

deny

45. All of the aforesaid violations of the IBT Constitution have been perpetrated or tolerated by reason of the misfeasance, nonfeasance or malfeasance of defendants and those in concert with them.

deny

46. Defendants and those in concert with them have also participated, by the conduct herein complained of, in violation of the AFL-CIO Constitution, although defendants and defendant International Organization are a member of or are affiliated with the American Federation of Labor and Congress of Industrial Organizations, whose president is George Meany and whose secretary-treasurer is William F. Schnitzler, and whose principal office is 815 16th Street, N. W., Washington 6, D. C.; and defendants, though bound as by contract to conform with the AFL-CIO Constitution, either have deliberately violated that Constitution to the great loss and detriment of the honest members of the International Organization, or have deliberately and culpably tolerated the violation of the AFL-CIO Constitution by the International Organization by some of the defendants and by persons in concert with defendants or in sympathy with defendants; particularly, defendants, by the acts and conduct herein complained of, have been guilty of violations of Article II, section 10 of the AFL-CIO Constitution which requires, as one of the primary objects and principles of the AFL-CIO, protection of the labor movement from any and all corrupt influences and from the undermining efforts of all who are opposed to democratic unionism; in that defendants not only did not protect the International Organization and its "subordinate bodies" from corrupt influences and from undemocratic unionism but they actually participated in a common effort or conspiracy to expand corrupt influences within the labor movement and to deprive the members of the International Organization of free and democratic unionism. Defendants also similarly violated (a) Article VIII, section 7, and Article XIII, section 1(d) of the AFL-CIO Constitution; (b) the AFL-CIO Resolution adopted in December, 1955, by the AFL-CIO Convention in which defendant International Organization participated; (c) the Resolution on Procedures adopted in June, 1956, by the AFL-CIO Executive Council; (e) Ethical Practices Code I, pertaining to local union charters, approved on August 29th, 1956, by the

AFL-CIO Executive Council; (f) Ethical Practices Code II, concerning health and welfare funds, approved by the AFL-CIO Executive Council January 28th, 1957; (g) Ethical Practices Code III, concerning racketeers, crooks, Communists and fascists, approved by the AFL-CIO Executive Council January 31st, 1957; (h) Ethical Practices Code IV, concerning conflicts of interest, approved by the AFL-CIO Executive Council January 31st, 1957; and (i) additional and similar codes of the AFL-CIO; all to the disrepute, detriment and loss, morally, influentially and financially, of the honest members of the International Organization and of trade unionism in general.

47. Defendants, by their dishonest and corrupt policies, and by the misfeasance, malfeasance and nonfeasance hereinabove set forth, and by the aforesaid conspiracy, conduct or common effort, have accumulated a vast treasury for the International Organization, totalling more than 37 million dollars, out of the hard-earned wages of the million and one-half members of the International Organization; and they have failed to use said treasury, as the IBT Constitution fairly intended that it should be used, for the advancement and benefit, pursuant to sound trade union objectives, of the International Organization and of its members. On the contrary, they have built up said treasury for the purpose of perpetuating themselves in power and for their own selfish aggrandizement, financially and otherwise; and, from time to time, they have treated said treasury as if it were their own personal property and for purposes having no relationship with sound trade unionism, which requires that such monies should be accumulated not for the sake of accumulation but for the sake of disbursement according to sound labor union objectives.

48. Defendants, particularly defendants Beck and Hoffa, have exercised their powers under the IBT Constitution to maintain a totalitarian labor-union dictatorship which effectively smothers local union autonomy as well as union democracy, and which cuts off from remedy or recourse to intra-union methods of correction plaintiffs and all members or officers who do not enjoy the favor of defendants and of those in concert with them.

49. Unless, upon the basis of this complaint, this Court promptly appoints an individual or a committee as master or masters in equity for the purpose of supervising honest elections of delegates and devising and employing honest procedures for intra-local elections and an honest election at the National Convention of the general officers of the International Organization, control over said organization cannot be recaptured by or returned to its honest members; the union treasury will be despoiled; and a Constitution originally inaugurated for the purpose of establishing democratic trade union procedures and of furthering democratic trade-union objectives will be permanently warped and irreparably mutilated into a tool for the personal dictatorships of defendants and those in concert with them; and the law and jurisprudence of our state and federal governments will lack an instrument or remedy whereby honest rank-and-file members, aggrieved by the lawless and unconstitutional depredations of unworthy leaders, can reassert their rights as workers and as free citizens.

50. Many of the crimes, delinquencies and violations of the IBT Constitution and many of the irregularities (by comparison with the standards of sound trade unionism) of some or all of defendants and those in concert with them have already been authoritatively and publicly exposed by (a) the Congressional investigation conducted by Congressman Clare Hoffman as Chairman of the Special Subcommittee of the Committee on Education and Labor of the House of Representatives, Eighty-third Congress, (b) the judicial decision of U. S. District Judge Edmund L. Palmieri in connection with the attempt to rig the election of Joint Council 16 for the purpose of accomplishing defendants' purposes, (c) the revelations made by the hearings before the Select Committee on Improper Activities in the Labor or Management Field, (d) local district attorneys, (e) the New York State Crime Commission, (f) U. S. Attorneys and (g) the public press in dispatches and articles by careful, accurate and authoritative reporters.

51. The International Organization's Constitution, Article XVIII, requires the exhaustion of intra-union remedies in the following language:

> "Sec. 14. (a) Every member, officer, local union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered, shall be obliged to exhaust all remedies provided for in this Constitution and by the International before resorting to any other court or tribunal.
>
> "(b). Where a member, officer, local union, Joint Council, or other subordinate body, before or following exhaustion of all remedies provided for within the International Union, resorts to a court of law and loses his or its cause therein, all costs and expenses incurred by the International Union shall be assessed against such individual, local union, Joint Council, or other subordinate body, in the nature of a fine, subject to all penalties applicable where fines remain unpaid.
>
> "Where such court action is by an individual or by a local union, Joint Council, or other subordinate body against a local union, Joint Council or other subordinate body, the foregoing provision in respect to the payment of costs and expenses shall be applicable in favor of the local union, Joint Council or other subordinate body proceeded against in court."

52. The Constitution of the AFL-CIO provides for no effective intra-union remedies which plaintiffs could use to vindicate their rights hereunder or to prevent the wrongs they seek to enjoin.

53. The aforesaid requirement of the IBT Constitution for the exhaustion of intra-union remedies can have no application to the present case for the following reasons:

Item

(a) Appeal to the channels of intra-union remedy would be illusory and vain because defendants control access to all of these channels and they control and indeed constitute the reviewing authority within the union and since they have demonstrated unfairness by their past conduct, they cannot fairly or reasonably be expected to condemn themselves.

(b) Defendants, particularly defendants Beck and Hoffa, so dominate the machinery set up by the IBT Constitution for judicial or administrative purposes that there would be no fair trial of any dispute between plaintiffs or defendants, since defendants would be the very judges or administrators to whom plaintiffs would have to appeal.

(c) Defendants themselves are the wrong-doers herein complained of, and it is stultifying to suppose they would condemn themselves.

(d) The union procedures available to plaintiffs are not fair nor are they honestly administered in accordance with the Constitution of the International Organization nor in accordance with the AFL-CIO Constitution; nor in accordance with relevant standards of due process and justice; and they have been applied by defendants and those in concert with them unequally and discriminatorily to favor friends and associates of defendants and to discourage, or visit reprisals upon, those who oppose or are uninfluenced by defendants.

(e) Attempts by members not in sympathy with defendants to exhaust intra-union remedies have been met by defendants' refusal even to consider such grievances; although defendants gave speedy relief, not warranted by the IBT Constitution, to applicants in concert with defendants.

(f) All officials and boards before whom plaintiffs might possibly press their remedy are under the influence, control and direction of defendants and defendants ~~have consistently~~ in the past manifested bias and partisanship to a degree which seriously disqualifies them from any right to judge in these matters or to administer them in the face of the misfeasances, malfeasances and nonfeasances herein enumerated.

(g) Plaintiffs would not, in any case, have time to resort to the futile procedures controlled by defendants.

54. Defendants and those in concert with them are collaborating and conspiring and have for weeks and months prior to the date of this complaint collaborated and conspired (a) to violate the Constitution of the International Organization and its regular usages and practices; (b) to violate the Constitution of the AFL-CIO and the principles of sound unionism; (c) to select and dominate to their own unconstitutional purposes the Convention delegates; (d) to rig and improperly control or influence the said Convention and the outcome of said election; and (e) otherwise to defeat an expression of the true wishes of the vast majority of the members of the International Organization who by fair election would not choose any candidate proposed by or in league with defendants in view of their past record of utter irresponsibility, and violation of law, of the IBT Constitution, the AFL-CIO Constitution and of decent trade union practices.

55. Defendants' intentional conduct in the past and their aforesaid conspiracy or common effort and the effects of their activities in pursuance of said conspiracy have already reached the stage which endangers the affiliation of the International Organization with the merged AFL-CIO group, to the great detriment of the membership of the International Organization; and because of defendants' misfeasance, malfeasance and nonfeasance in office, the Ethical Practices

Committee of the AFL-CIO is presently processing charges against some of defendants and against the International Organization. These charges threaten to result in the ousting of the International Organization and its many "subordinate bodies" from the AFL-CIO, to the great loss and detriment of the honest members of the International Organization and of its honest officers and "subordinate bodies" who resent being dealt with by the closed dictatorship, conspiracy or common effort constituted by defendants and those in concert with them and who resent the imputation of irregularity and dishonesty which defendants' public or notorious acts have cast upon the vast majority of the membership who are honest, law abiding and decent American citizens and workers.

56. Upon information and belief, the approximate amount of money in the treasury of defendant International Organization is Thirty-seven Million ($37,000,000) Dollars. That fund is completely within control of defendants despite the fact that they have exploited it or permitted its exploitation for improper uses or purposes and they have improperly administered the Constitution, practices and usages of the International Organization; and the manner in which they have irresponsibly used funds from such treasury and the manner in which they have approved the use of union funds belonging to the membership of the local unions for the purpose, for example, of paying improper or exorbitant expenses and high legal fees for persons brought up on charges of crime (some of whom have been convicted) and for the purpose of achieving objectives violating the IBT Constitution and the AFL-CIO Constitution, indicates that stewardship over such large treasury funds is not responsibly or safely being discharged by or entrusted to defendants.

57. In all of the circumstances of this case as herein detailed, no fair or constitutional election choosing, or authorizing the Executive Boards of local unions to appoint, local union delegates to the next Constitutional Convention can be conducted by defendants or by anyone else except upon the basis of secret local union balloting regulated by fair and impartial rules administered under the auspices and supervision of this Court; and in the context of the relevant events, as herein outlined, such secret and fair elections and election procedures for each of the 891 local unions involved are required by the IBT Constitution.

58. In all of the circumstances of this case, as herein detailed, no fair election or elections can be conducted at the next National Convention of the International Organization unless delegates, constitutionally elected or appointed, are permitted or required to cast secret ballots under fair and impartial rules administered under the auspices and supervision of this Court; and in the context of relevant events, as herein outlined, such impartial and secret balloting and election are required by the IBT Constitution and the Constitution of the AFL-CIO.

59. The General Executive Board of the International Organization is listed as follows in the April 1st, 1957 (the latest available) "Roster of Local Unions with Addresses of Secretaries":

DAVE BECK
General President
25 Louisiana Avenue, N. W.
Washington 1, D. C.

E **JOHN F. ENGLISH**
General Secretary-Treasurer
25 Louisiana Avenue, N. W.
Washington 1, D. C.

~~DANIEL~~ J. MURPHY Ex Harold Gibbons
First ~~Vice~~ President
1641 South Kingshighway
St. Louis 10, Missouri

① **JOHN J. CONLIN**
Second Vice President RE.
69 Jefferson Street
Hoboken, New Jersey

~~SIDNEY~~ L. BRENNAN
Third ~~Vice~~ President Gordon Conklin
706 First Avenue, North
Minneapolis 3, Minnesota

② **JOHN T. O'BRIEN**
Fourth Vice President RE.
4217 South Halsted Street
Chicago 9. Illinois

~~FRANK~~ BREWSTER
Fifth Vice President George Mock
553 John Street
Seattle 9, Washington

~~THOMAS~~ L. HICKEY John O'Rourke
Sixth Vice President
325 Spring Street, Room 306
New York 13, New York

~~WILLIAM~~ A. LEE Murray W Miller
Seventh ~~Vice~~ President
133 S. Ashland Boulevard
Chicago 7, Illinois

③ **JOSEPH DIVINY**
Eighth Vice President RE
25 Taylor Street
San Francisco 2, California

~~JAMES~~ R. HOFFA Bert Brennan
~~Ninth Vice~~ President
2741 Trumbull Avenue
Detroit 16, Michigan

④ **EINAR MOHN**
Tenth Vice President RE
25 Louisiana Avenue, N.W.
Washington 1, D. C.

HARRY TEVIS
Eleventh Vice President RE.
701 Plaza Building
Pittsburgh 19, Pennsylvania

JOHN ROHRICH, Trustee
2070 East 22nd Street
Cleveland 15, Ohio

Raymond Cohen / Trustee

Paul D. Jones, Trustee
846 South Union Avenue
Los Angeles 17, California

VP

John Backhus, Trustee
N. W. Corner 11th & Chew St.
Philadelphia 41, Pennsylvania

60. All defendants herein and all General Officers and members of the General Executive Board (listed in the foregoing paragraph) knew, or in the ordinarily prudent exercise of their duties should have known, of the common effort or conspiracy alleged in this claim or cause of action; and they should, in the exercise of their duties as imposed on them by the IBT Constitution and the AFL-CIO Constitution, have taken steps to correct the abuses herein set forth, especially the manifest violations of the IBT Constitution and the AFL-CIO Constitution as well as the widespread and notorious failure of a majority of the Teamster local unions whose delegates will constitute the forthcoming National Convention at Miami, Florida, to have proper credentials or to have properly elected or appointed delegates, required as aforesaid by the IBT Constitution.

61. Unless defendants are enjoined and restrained from conducting the aforesaid election, the said treasury will be further looted in divers ways and especially to the extent of a continuing large annual salary expense approved by the hand-picked delegates under defendants' control for the purpose of continuing defendant, Dave Beck, in office as General President Emeritus, although he is utterly unfit for any union office on the basis of his past dishonest and irresponsible stewardship.

62. Unless defendants are enjoined and restrained, they threaten to control and completely dominate the Convention aforesaid and especially the said election and its outcome and to put in office defendant, James R. Hoffa, who, on the basis of his past record and his participation in ventures and deals as aforesaid, so seriously violated the IBT Constitution, the AFL-CIO Constitution and the ethical standards of sound trade-unionism and of the AFL-CIO as to deserve expulsion from the International Organization and from the AFL-CIO.

63. Defendant James R. Hoffa is unfit, on the basis of his associations, his misfeasances, malfeasances and nonfeasances in the office of Vice-President, to serve as General President of the International Organization and his election would result in the expulsion of the International Organization from the merged AFL-CIO and the domination of the International Organization by gangsters and racketeers; and he could never be elected by an honest vote of all truly eligible members or delegates.

64. The election of defendant Dave Beck as General President Emeritus would, on the basis of his past record of misfeasance, malfeasance and nonfeasance, be a disgrace to the International Organization and would occasion the expulsion of the International Organization from the merged AFL-CIO group and would be in violation of the purposes and language of the International Organization's Constitution and of the AFL-CIO Constitution in that Dave Beck has been

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guilty of the dishonest handling of union funds and other criminal or highly irregular stewardship of the affairs of the International Organization while he has been General President; and he would never be elected by an honest vote of those really eligible to vote.

65. The only possible way in which an election pursuant to the Constitution of the International Organization can be honestly conducted is by the appointment by this Court of a master or several masters in equity to supervise, in the first instance and at the local union level, honest elections of delegates to the National Convention and to prevent the current disfranchisement of members and locals of the International Organization and then to supervise the election of General Officers at a properly convoked and elected Convention; because the International Organization, as victimized by defendants and those in concert with them, is bankrupt of its real wealth, which is responsible stewardship; and must, in accordance with the exigencies of justice and equity and of the IBT Constitution, be put into receivership until responsible stewardship respecting the IBT and AFL-CIO Constitutions can be restored to its members whose democratic rights defendants obstruct and deny.

66. Unless such defendants are enjoined and restrained, they threaten to disfranchise most of the members and locals of the International Organization and to put in office candidates imposed by defendants and those in concert with them, candidates who are unfit to head any decent trade union and who are part of a conspiracy or common effort to violate the IBT Constitution and to defraud the membership of their right to vote and of a conspiracy or common effort to rig and predetermine the Convention election against the real wishes of the vast majority of the membership and of any honest and qualified delegates who could be assembled to represent that membership; and of a conspiracy or common effort to prevent honest trade unionists within the International Organization and its "subordinate bodies" from being represented by competent and honest labor leaders or delegates.

67. Continuance or fruition of the plans, common effort or conspiracy of defendants and of their nefarious stewardship would result in immediate, irreparable and grievous injury, loss and damage to plaintiffs and to all others similarly situated and to many employers and to the public and to the national economy and would result in further raids upon Teamster Union treasuries far in excess of Three Thousand ($3,000.00) Dollars, without counting interest and costs; and would prejudice the welfare and fortunes of the members, totalling approximately one and one-half million, of the International Organization and of its subordinate bodies in violation of the IBT Constitution and would subject that membership to the arbitrary and ruthless control of and domination by gangsters, racketeers and others who have been in concert with defendants or who have aided defendants in their own personal aggrandizement at the expense of the International Organization.

68. Plaintiffs come into this Court with clean hands and without laches; and the balance of convenience weighs heavily in favor of plaintiffs in view of the patently and notoriously fraudulent and dishonest

conduct of defendants in their conspiracy or common effort to violate, as aforesaid, the International Constitution.

69. Plaintiffs have no adequate remedy at law. The national situation presented by the misfeasance, malfeasance and nonfeasance of defendants constitutes a gigantic fraud upon the million and one-half members of the International Organization and their rights under the IBT Constitution. Congress has enacted no statute, nor have the States enacted any laws under which the rank-and-file members could possibly remedy the extensive and nation-wide intra-union debauchery for which defendants are responsible, either because they themselves perpetrated that debauchery or because they tolerated it without protest. Unless this Court acts at the behest of the rank-and-file members who are plaintiffs herein, acting for themselves and others similarly situated, there is absolutely no hope for any future correction of the present scandalous situation by means of intra-union remedies or intra-union personnel and there is scant hope that new legislation can oust defendants from their tenacious and totalitarian control. Plaintiffs have found it impossible to enlist the open support of any union official, although many officials of the International Organization other than defendants have indicated confidentially that they will support plaintiffs eventually and openly at a time when they deem it proper and safe to do so. The choice presented to the membership is that of remedy under the authority of the law and under the supervision of a court of equity or no remedy at all and of a continuance of the despotism, criminality, irresponsibility of defendants and those in concert with them; and of the violations of the IBT Constitution and of law without any possible redress in the foreseeable future. The membership and minor officials of the International Organization and its subordinate unions have had all doors and avenues of correction closed to them by defendants and those in concert with them. That membership and its victimized officialdom have been terrified in many instances by the threats and coercions of defendants and those in concert with them. They have been robbed of hope because the judicial doctrine of exhaustion of intra-union remedies would impose upon rank-and-file members and upon minor officials litigation expenses which they cannot bear, since they do not, like defendants, control union treasuries and since they would be fighting against defendants and those in concert with them who do control union treasuries and who freely spend union monies for their own personal aggrandizement, for their own perpetuation in office and even to defend themselves against well founded criminal indictments. Specifications of individual events and activities, upon which the broad allegations of this complaint is predicated, present an incredibly frightening picture of intra-union tyranny and lust for power and money by irresponsible leaders, including defendants, of the largest trade union in the United States. Only expensive investigations such as those conducted by Congress or those which could be instituted at the behest of this Court by a master or several masters in equity could piece out in detail the shocking circumstantial premises in fact and in law upon which the conclusions set forth in this complaint are based. Only persons like plaintiffs and those similarly situated throughout the United States can have a realistic if bitter appreciation of the autocracy, lawlessness and abuse of authority and position which has characterized defendants and those in concert with them; and, for plaintiffs, the legal formula that there is no adequate remedy at law has a special and deep relevancy.

70. No election conducted by defendants, nor any election conducted during their encumbency and under their supervision could be a free or fair election such as the IBT Constitution contemplates in view of the momentum of domination and undue influence which has been generated by the unconstitutional and unlawful acts, as aforesaid, of defendants; and in view of the atmosphere of intimidation and coercion created by defendants and their conduct as aforesaid.

71. Defendants are involved in interstate and foreign commerce; and they do business and conduct activities in every state of the United States and also in Canada. They or their agents and employees, in the course of their official or usual business, represent employees in all of the states of the United States and in Canada, where they all engage in labor activities.

What so far are steps litigation

72. The expenses of this litigation and the investigations preparatory to it are a proper claim upon the treasury or funds of the International Organization; as are all legal and other expenses incidental to the conduct of this litigation, including the fees of a master or masters in equity and such staff and legal counsel as shall be needed by such master or masters in equity—since such expenses, fees and disbursements are the only means available (a) to redeem the International Organization from the nefarious control of defendants and those associated with them, (b) to restore it to honorable and useful function as an ethical trade union and as an organization working for the welfare of its members; (c) to reacquire for the International Organization a rightful place with lawful groups enjoying the respect of workers, employers and the public; (d) to remove from the shoulders of decent employers the incubus into which the International Organization and its "subordinate bodies" had largely degenerated under the evil, unconstitutional and unlawful leadership of defendants; (e) to eliminate corrupt deals with bribing employers which victimized workers by "sweetheart" contracts and other tactics of disgraceful labor relations; and (f) to exile from industrial relations the racketeers, gangsters and extortioners who prey, like vultures, on the national economy.

73. The reason why plaintiffs proceed by Order to Show Cause rather than by usual notice of motion appears from the urgency of the situation described in this complaint; because unless the remedies herein requested are made available expeditiously, they will be ineffectual, since defendants have already taken steps to rig the forthcoming election at the National Convention and to carry out at such Convention the aforesaid conspiracy or common effort in violation of the IBT Constitution. No previous application for the relief herein sought has been made to this or any other Court.

FOR A SECOND SEPARATE AND DISTINCT CLAIM OR CAUSE OF ACTION

74. Plaintiffs repeat and reallege the paragraphs of this complaint numbered 1 through 39; 43, subparagraphs (1), (2), (4), (5), (6), (7), (8), (10), (11), (12), (13), (14), (15), (16), (18), (19), (22), (25), (26), (30), (32), (33), (34), (42), (43), (44); 44, subparagraphs (1) through (6), (8), (11), (13) through (17), (19), (21) through (23),

65-a;

(25) through (29); 45; 46; 49; 51; 52; 53; 57; 58; 59; 62 through 65; 69 through 73.

75. More than one-half of the delegates to the forthcoming International Convention to be held at Miami, Florida, from September 29, 1957 to October 5, 1957, have been designated as such in violation of the IBT Constitution, particularly Article III, section 5 thereof; and neither they nor defendants nor the General Executive Board of the International Organization have any right to conduct that Convention or to participate at such Convention in the election of officers; and such election, in view of the said violations of the IBT Constitution, would constitute a fraud on the members and "subordinate bodies" of the International Organization and would constitute a breach of duty and trust by defendants and a breach of their contractual duty under the said IBT Constitution, which would render the decision, resolutions and actions of said delegates and said International Convention illegal and void.

Wherefore, plaintiffs pray that:

1. This Court enjoin and prohibit (pending the determination of these actions and permanently) defendants and those in concert with them from

(a) conducting at the National Convention scheduled for Miami, Florida during the period from September 29-October 5, 1957, the election they contemplate and have arranged;

(b) conducting any national election for the election of any national officer or for the office of General President or General President Emeritus, General Secretary-Treasurer or General Vice President or member of the General Executive Board unless those voting at such election are properly elected or selected as delegates pursuant to the IBT Constitution;

(c) recognizing as valid the credentials of any delegate to said National Convention not elected by the membership of his local union or not appointed as such delegate by an executive board of such local union, duly authorized hereto by a vote of the members of such local union;

(d) permitting any election at any National Convention unless the delegates to such Convention have been chosen as the IBT Constitution requires;

(e) doing any other things or acts in connection with any National Convention which violate the IBT Constitution or which put into effect any ruling or decision of any officer or subordinate body of the International Organization which violates the IBT Constitution;

(f) tampering with the IBT Constitution or attempting, by themselves or by the National Convention which they control, to amend or modify the IBT Constitution in order to validate the election or selection of delegates or to ratify any choice or election of officers or to approve or ratify any resolution adopted at the forthcoming National Convention; or to change at said Convention or otherwise the method of amending the Constitution; or otherwise to amend the IBT Constitution until the further order of this Court.

(g) threatening plaintiffs directly or indirectly, or visiting any reprisals upon them, or interfering with them or any witness in any way because of the conduct of this litigation or because of their status as plaintiffs or witnesses herein;

(h) discriminating against plaintiffs or any witness in any way because they have filed this complaint or give testimony under it.

(i) appointing or establishing a Credentials Committee for the purposes of any National Convention.

✓ 2. This Court appoint a receiver or board of receivers, a master in equity or masters in equity authorized

(a) to devise and establish, pursuant to the IBT Constitution, fair and sound procedures for elections by the members of local unions, wherein and whereby said local union members either (I) authorize by fair and secret ballot the local union's executive board to select proper delegates, qualified as such and as members of the International Organization for attendance at and for voting in a National Convention called pursuant to the IBT Constitution to elect proper and eligible members as General Officers of the International Organization; or (II) themselves, by secret ballot and under fair voting procedures, elect delegates to attend and vote at such National Convention;

(b) to supervise compliance with the IBT Constitution and the AFL-CIO Constitution during the intra-local balloting and during the National Convention;

(c) to confine his or their supervision and authority to enforcement and lawful application of said Constitutions for the purposes of said National Convention election and the intra-local elections which must precede that election, without any attempt at imposing on any member or subordinate body of the International Organization the judgment or preferences of said receiver or receivers, master in equity or masters in equity;

(d) to do the aforesaid things with all dispatch and expedition consistent with their being done well under the IBT Constitution and the AFL-CIO Constitution and in accordance with the objectives of said Constitutions; and to return the full management of the affairs of the International Organization to the General Officers duly elected at such National Convention convened pursuant to the Order of this Court; and

(e) to obtain the sworn testimony of witnesses from the various locals affiliated with the International Organization for the purpose of ascertaining from such witnesses or from documents in their control a true and accurate account of how the "delegates" to the coming National convention have been selected;

(f) to order payment, out of the general treasury of the International Organization, of the expenses and disbursements of this litigation, including reasonable attorneys' fees and the fees and charges of masters and receivers and all incidental expenses incurred by them in making any investigation or conducting any election or doing anything authorized by this Court, including travel expenses of witnesses in this litigation;

(g) to require defendants to obtain from local unions sworn statements of their officers and members of their executive boards respecting the detailed procedures and methods used or tolerated by them for the selection of their "delegates" to the National Convention; and

3. This Court grant such other and further relief as to it seems just and proper.

Dodd, Kaplan & Schmidt,
by Thomas J. Dodd
Godfrey P. Schmidt
Sheldon Z. Kaplan

Office & Post Office Address,
Woodward Building,
Washington 5, D. C.

State of New York }
County of New York } ss.:

The undersigned, being severally duly sworn, depose and say that they are citizens and residents of the State of New York; that they are plaintiffs herein; and that they have read the foregoing complaint and know the contents thereof and that the same are true of their own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters they believe it to be true.

John Cunningham
Steve Milone
Frank Kennedy
Thomas C. Manning

Sworn to before me this
18th day of September, 1957.

Joseph J. LoBrutto,
Notary Public, State of New York
No. 24-7578075
Qualified in Kings County
Term expires March 30, 1958

(Seal)

29

This exhibit already served.
It is otherwise known to + in
the possession of Defendants

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SEP 28 1957

John Cunnigham, Thomas C. Manning Frank Kennedy, Andrew Boggia, George Becker, Joseph Molloy, John McManus Harold Will, Steve Milone, John McGlynn, Edward McFarland, John Olsen and Hobart Gale against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO	GA # 2361-57

ORDER

Upon hearing and consideration on September 27, 1957, by the Court of the Plaintiffs' Motion for a Preliminary injunction in the above captioned case, pursuant to a Rule to Show Cause issued by this Court, and upon consideration of the record and arguments therein, it is hereby ordered that the Plaintiffs' motion for a Preliminary injunction be granted.

It is further ordered that the Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and those in concert with it, be and they are hereby prohibited and enjoined from:

(1) Conduction at the National Convention scheduled for Miami, Florida, during the period September 29, 1957 to October 5, 1957, the election of officers which it contemplates and has arranged:

(2) Conducting any national election for the election of any national officer or for the office of General President or General President Emeritus, General Secretary-Treasurer or General Vice-President or member of the General Executive Board:

(3) Recognizing as valid the credentials of any delegate to said National Convention not elected by the membership of his local union or not appointed as such delegate by an executive board of such local union duly authorized thereto by a vote of the members of such local union pursuant at the constitution of the Defendant International Brotherhood:

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PROVIDED, that the plaintiff post with the Court an Injunction Bond in an amount of Fifty Thousand, ($50,000.00) Dollars.

This Order to remain in force until further order of this Court.

S/ F. Dickinson Letts

Signed September 28, 1957, at ______________ P.M.

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SUPREME COURT OF THE UNITED STATES

No.__ October Term, 1957.

John Cunningham, Thomas G. Manning,
Frank Kennedy, Andrew Boggia, George
Becker, Joseph Molloy, John McManus,
Harold Will, Steve Milone, John McGlynn,
Edward McFarland, John Olsen and
Hobart Gale,
Petitioners,

v.

John F. English, Individually and as
General Secretary-Treasurer of International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America, AFL-CIO, Dave Beck, Daniel
J. Murphy, John F. Conlin, Sidney L.
Brennan, John T. O'Brien, Frank
Brewster, William A. Lee, Joseph Diviny,
James R. Hoffa, Einar O. Mohn, Harry
Tevis and International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
and Helpers of America, AFL-CIO,
Respondents.

On Petition to Vacate an Order of the Court of Appeals for the District of Columbia, Staying a Preliminary Injunction of the District Court for the District of Columbia.

(October 1, 1957.)

MR. CHIEF JUSTICE WARREN, CIRCUIT JUSTICE.
Petitioners seek relief from an order of the Court of Appeals for the District of Columbia Circuit. That Court's order stayed, pending appeal, a preliminary injunction issued by the District Court which, among other things, enjoined the respondent union from conducting an election of officers at its national convention scheduled to begin September 29, 1957, and now in progress. The petition, filed here September 30, 1957, comes to me as Circuit Justice for the District of Columbia Circuit.

The Court of Appeals granted the stay on the ground that the injunction "goes beyond the necessities of the situation as shown by the record," and "is not required in order to prevent irreparable injury." This proceeding was instituted in the District Court only 10 days before the union's convention was scheduled to open. Many of the allegations in the papers are based on events known by petitioners to have occurred months and years ago. The relief sought at this late date would call for an extraordinary exercise of judicial power that only the most compelling considerations could warrant. To enjoin the election of officers of an international union of 891 locals and 1,500,000 members during the course of its convention proceedings, on allegations of conspiracy supported by the affidavits here, without testimony having been taken, would indeed be drastic action.

In the light of all the circumstances, there appears to be no sufficient reason for me to interfere with the conclusions of the Court of Appeals. Accordingly, the petition is denied.

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

NO. 14,114 APRIL TERM 1957

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,

Appellant,

v.

John Cunningham, Thomas C. Manning, Frank Kennedy, Andrew Boggia, George Becker, Joseph Molloy, John McManus, Harold Will, Steve Milone, John McGlynn, Edward McFarland, John Olsen and Hobart Gale,

Appellees.

Before: Washington, Danaher and Bastian, Circuit Judges.

ORDER

This case came on for hearing on appellant's petition for stay and on the record on appeal, and was argued by counsel, upon consideration whereof, and it appearing to the Court that the injunction issued by the District Court goes beyond the necessities of the situation as shown by the record and as presented to the Court, and is not required in order to prevent irreparable injury to the appellees, said injunction is hereby stayed pending the final disposition of this appeal or further order of this Court, without prejudice to such relief as may properly be grantable to appellees by the District Court after the holding of any election by appellant union, and without prejudice to full re-examination in the District Court of all actions of the credentials committee at the convention of the Appellant union in the recognition or seating of delegates; provided that all delegates recognized or seated by the credentials committee shall be selected in accordance with the requirements of the constitution of the union, and that a quorum of the convention shall consist only of delegates so seated.

It is FURTHER ORDERED that the hearing on the merits of this case be expedited in the District Court regardless of the pendency of the present appeal, as the calendar of that Court may permit.

Per Curiam.

Dated: September 28, 1957.

OCT 14 1957

PARAGRAPH NUMBER 65a FOR INSERTION BETWEEN PARAGRAPHS NUMBER 65 AND NUMBER 66 OF THE COMPLAINT:

65a. Defendants and those in concert with them did, between September 30 to October 5, 1957, inclusive, conduct a national convention of defendant INTERNATIONAL ORGANIZATION; and in the course of the convention did conduct an alleged election; and the proceedings or minutes of that election are set forth in printed pamphlets published by Defendants under title, "Proceedings, 17th Convention, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Miami Beach, Florida, September 30, 1957, First Day, Second Day, Third Day, Fourth Day, Fifth Day and Sixth Day." Said convention was held in violation of the Constitution of the INTERNATIONAL ORGANIZATION and in disregard of the rights of its subordinate bodies and members: in that delegates who were not properly credentialed were permitted to attend, to participate and to vote; and in that subordinate bodies and members in substantial numbers were disfranchised. And Defendants and their appointees on the so-called Credentials Committee of said 17th Convention deliberately violated the Constitution of the INTERNATIONAL ORGANIZATION in the seating of such delegates; and Defendants dictatorially and undemocratically conducted the proceedings of said 17th Convention in such a manner as to disregard proper challenges and as to cut off criticism and debate; and Defendants and those in concert with them, in other grave respects, conducted themselves and the said 17th Convention in a fraudulent, rigged and disgraceful manner, as was to be expected from hand-picked and rigged delgates. where this info came from

Clay

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PARAGRAPHS TO BE ADDED TO SECTION I OF THE PRAYER FOR RELIEF

(j) Declaring as void and of no effect the aforesaid 17th Convention of the INTERNATIONAL ORGANIZATION and all of its agenda, proceedings and decisions, including but not limited to the election of any General Officers of the INTERNATIONAL ORGANIZATION and all amendments to the IBT Constitution which the 17th Convention purported to enact.

(k) Enjoining and prohibiting the defendant, James R. Hoffa, from taking office as General President of Defendant INTERNATIONAL ORGANIZATION; or ousting him from office if, prior to the service of appropriate preliminary injunction, he has assumed or usurped such office.

(l) Enjoining or prohibiting any and all other persons allegedly elected to office in the INTERNATIONAL ORGANIZATION at the said 17th Convention from taking office; or ousting them if, prior to the service of appropriate preliminary injunction, they have assumed or usurped office.

(m) Prohibiting defendants as de facto or hold-over officers of Defendant INTERNATIONAL ORGANIZATION and those in concert with them from taking any action or applying any decision, practice, usage or policy in conflict with the Constitution of said ORGANIZATION.

(n) Prohibiting any person purporting to act as officer or official of Defendant INTERNATIONAL ORGANIZATION from putting into effect, enforcing or applying any decision of defendants or any of them which does not involve purely ministerial or routine practice, act or function without prior notification given in writing to this Court and without the approval of this Court.

(o) Prohibiting defendants or any person purporting to act as officer or official of Defendant INTERNATIONAL ORGANIZATION from disbursing without the prior approval of this Court any sum or sums of money from the International Treasury in excess of $5,000 for any single transaction, business or liability.

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(p) receiving any salary or other compensation as officers or officials of Defendant INTERNATIONAL ORGANIZATION, on the basis of any alleged election conducted at the aforesaid 17th Convention; and requiring that the salary or other compensation of persons thus allegedly elected shall be accumulated and held in escrow under the direction of this Court.

(q) Threatening plaintiffs, or any persons who signed affidavits for plaintiffs, or any potential witnesses for plaintiffs, directly or indirectly; or visiting any reprisals upon them; or interfering with them in any way in the conduct of this litigation because of their status as employees, witnesses or affiants herein; or discriminating against them in any way because they have filed this complaint, made any affidavit herein or have given or propose to give any testimony or evidence herein.

10-B

OCT 26 1957

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JOHN CUNNINGHAM, ET AL,)
)
Plaintiffs)
) Civil Action No. 2361-57
v.)
)
JOHN F. ENGLISH, ET AL,)
)
Defendants.)

ANSWER TO AMENDED COMPLAINT

The Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, in answer to the Amended Complaint filed by Plaintiffs, represents to the Court as follows:

As legal defenses other than those hereafter set forth, Defendant states that the Complaint is insufficient as a matter of law in that (1) jurisdiction is not acquired in this action by virtue of Section 1332 of Title 28 of the United States Code nor by diversity of citizenship; (2) the Complaint violates Rule 8(a) and (e) of the Federal Rules of Civil Procedure in that it does not meet the requirements of brevity and conciseness since it is lengthy, verbose, argumentative and contains allegations immaterial to the issues; (3) the Complaint alleges conspiracy and fraud in loose, general and conclusionary averments and does not particularize the illegal acts, as required by Rule 9 of the Federal Rules of Civil Procedure; (4) the parties charged with such conspiracy named in the Complaint have not been served with process and others who are charged with conspiracy have not been made parties; (5) the Complaint demands that certain officers elected at the 17th Convention of the International Brotherhood of Teamsters held between September 29 and October 5 not be seated and these officers have not either been served by process or are not named in the Amended Complaint and are, therefore, indispensible parties; (6) the Complaint sets forth allegations of a non-justiciable controversy dealing with political affairs of a voluntary unincorporated association and the election procedure, as required by the Constitution, and the Court will not take jurisdiction over such a matter; (7) the Plaintiffs have not exhausted internal remedies within the framework of the Constitution nor is it shown that any attempt has been made by Plaintiffs to request remedies under the terms of the Constitution; (8) That the Plaintiffs failed and refused to submit evidence of alleged illegal elections or selections of delegates to the Credentials Committee or to the Convention nor have they made any protests or challenges to the Credentials Committee in respect to the seating of delegates; (9) The Complaint fails to contain essential averments upon which a class action can be based and Plaintiffs are not truly representatives of the class which they allegedly represent, there being some 1,500,000 members situated in all parts of the United States.

1. Defendant denies that this Court has jurisdiction over this cause of action by reason of Section 1332 of Title 28 of the United States Code. Further answering, Defendant states that the above section referred to authorizes the bringing of suit for violation of collective bargaining contracts between an employer and a labor organization and has no applicability to the complaint or the issues raised herein.

2. Defendant admits the allegations contained in Paragraph 2.

3. Defendant admits that it has its principal place of business at 25 Louisiana Avenue Northwest, Washington, D. C. Defendant denies that all named Defendants have offices at that address or carry on their business from that address regularly or from time to time. Defendant admits the other allegations of this paragraph.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

JOHN CUNNINGHAM, ET AL,
Plaintiffs
v.
JOHN F. ENGLISH, ET AL,
Defendants

Civil Action No. 2361-57

MEMORANDUM OF MEMBER SCHMIDT CONCERNING THE ERRORS IN THE DISSENT OF MEMBER WELLS FILED OCTOBER 1, 1958, WITH RESPECT TO THE "AMENDMENT TO PETITION FOR CONSTRUCTION * * * OF THE CONSENT ORDER"

It is quite apparent from the text of Member Wells' dissent dated October 1, 1958, that he neither read my recent Motion on Behalf of Plaintiffs (except Cunningham) for Construction, Reformation and/or Modification of the Consent Order nor understood my theory and contentions in connection therewith.

He says, for example, that he "is informed" that I, in my capacity as attorney for twelve Teamster members, am "simultaneously filing a request for the appointment of a receiver to conduct the union's affairs". Annexed hereto is a copy of my actual motion which will correct Member Wells' misunderstanding.

Briefly, my request in that motion respecting the appointment of a receiver is an alternative request which presupposes rejection by the Court of the interpretation of the Consent Order as understood by the parties at the time of its formulation.

Member Wells considers it "unconscionable" for a party to the Consent Order now to "suggest to the Court that * * * the Order * * * be vitiated on the asserted basis that Member Schmidt and the parties he represents themselves failed to notify their Teamster members * * *". I made no such suggestion. In the second place, I have never argued, nor do I believe, that the Consent Order should be vitiated because I or the parties I represented failed to notify Teamster members. I find nothing in Rule 23(c) which lays such a duty on me or on my clients. Rule 23(c), if applicable, would place the duty of notification on the Defendants who alone have the means and the facilities for such notification and who, under the Consent

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4. Defendant denies the allegations contained in Paragraph 4.

5. Defendant denies the allegations contained in Paragraph 5.

6 - 18. In answer to Paragraphs 6 to 18 inclusive, Defendant admits the allegations contained therein.

19. The Defendant denies that this action is brought as a class action for all of the 1,500,000 members of the Defendant. Defendant denies that there are common questions of law and fact affecting their several rights of 1,500,000 members. Defendant denies the remainder of the allegations in Paragraph 19.

20. Defendant admits the allegations contained in Paragraph 20.

21. Defendant admits the allegations contained in Paragraph 21.

22. Defendant admits that John F. English was and still is General Secretary-Treasurer and a member of the General Executive Board of the International. Defendant denies that John F. English is a resident of the District of Columbia. Further answering, defendant states that John F. English is a resident of the State of Maryland.

23. Defendant admits the allegations contained in Paragraphs 23, 24, 25, 26, 27, 28, 29 and 30 inclusive.

31. Defendant admits that Einar Mohn is Vice President of the International and a member of its General Executive Board. Defendant denies that Einar Mohn is a resident of the District of Columbia. Further answering, defendant states that Einar Mohn is a resident of the State of Maryland.

32. Defendant denies the allegations contained in Paragraphs 32 and 33.

34. Defendant admits that it acts under a Constitution. Said Constitution speaks for itself as a matter of law. Defendant denies all of the other allegations contained in Paragraph 34, the same being conclusionary and argumentative and moves that they be stricken.

35. Defendant admits that its Constitution is a contract between Defendant and Plaintiffs which Plaintiffs, as the other members, are required to follow. Defendant denies the remainder of the allegations contained in Paragraph 35.

36. The events alleged in Paragraph 36 have already taken place and require no answer.

37. The Constitution of the Defendant speaks for itself and the allegations contained in Paragraph 37 require no answer.

38. Defendant admits the allegations contained in Paragraph 38.

39. Defendant denies all of the allegations contained in Paragraph 39.

40. Defendant denies all of the allegations contained in Paragraph 40.

41. Defendant denies all of the allegations contained in Paragraph 41.

42. Defendant denies the allegations contained in Paragraph 42.

43. Defendant denies all of the allegations contained in Paragraph 43. Further answering, Defendant states that these allegations are irrelevant, immaterial and have no bearing upon the issues of the validity of the Convention nor do the allegations meet the requirements of Rule 8(a) and (e), they being only conclusionary and argumentative.

44. Defendant denies all of the allegations contained in Paragraph 44. Further answering, Defendant states that such allegations are immaterial and irrelevant to the issues in the case and are conclusionary and argumentative.

45. Defendant denies all the allegations contained in Paragraph 45.

46. Defendant admits that it is affiliated with the American Federation of Labor - Congress of Industrial Organizations whose President is George Meany and whose Secretary-Treasurer is William F. Schnitzler, whose offices are located as described in said paragraph. Defendant denies all of the other allegations contained in Paragraph 46.

47. Defendant denies the allegations contained in Paragraph 47. Further answering, Defendant states that such averments are conclusionary and contain characterizations not pertinent or material to proper pleading.

48. Defendant denies the allegations contained in Paragraph 48.

49. Defendant denies that it is necessary to have a master or masters in equity appointed for the purpose of supervising elections, the elections already having been conducted. Defendant denies the remaining allegations of Paragraph 49. Further answering, Defendant states that said allegations are conslusionary, argumentative and contain characterizations which are improper in pleading.

50. Defendant denies the allegations contained in Paragraph 50.

51. Defendant states that the Constitution of the Defendant speaks for itself and the allegations contained in Paragraph 51 require no answer.

52. Defendant denies the allegations contained in Paragraph 52.

53. Defendant denies the allegations contained in Paragraph 53. Further answering, Defendant states that said allegations are conclusionary and argumentative and contain immaterial and irrelevant and impertinent matter not material to the issues of this case. Further answering, Defendant states that the allegation that any inter-union remedy would be "illusory and vain" is a conclusion of the pleader as Plaintiffs have never attempted to use an inter-union remedy as required by the Constitution of Defendant. Defendant denies the remainder of the allegations contained in Paragraph 53.

Further answering Paragraph 53(g), Defendant states that Plaintiffs had abundant time to resort to the procedures as required by the Defendant's Constitution.

54. Defendant denies the allegations contained in Paragraph 54. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

55. Defendant denies the allegations contained in Paragraph 55. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

56. Defendant denies the allegations contained in Paragraph 56. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

57. The allegations contained in Paragraph 57 have no materiality to the issues at hand since the election has already been conducted. In the event answer is required of this paragraph, the allegations are denied.

58. The allegations contained in Paragraph 58 have no materiality to the issues at hand since the election has already

been conducted. In the event answer is required of this paragraph, the allegations are denied.

59. Defendant admits the allegations contained in Paragraph 59.

60. Defendant denies the allegations contained in Paragraph 60. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

61. Defendant denies the allegations contained in Paragraph 61. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

62. Defendant denies the allegations contained in Paragraph 62. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

63. Defendant denies the allegations contained in Paragraph 63. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

64. Defendant denies that Dave Beck has been elected as President Emeritus. Defendant denies the remainder of the allegations contained in Paragraph 64. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

65. Defendant states that the Convention has already been conducted by the Defendant. Defendant denies all of the allegations contained in Paragraph 65. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

65(a). Defendant denies all of the allegations contained in Paragraph 65(a). Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

66. Defendant denies the allegations contained in Paragraph 66. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

67. Defendant denies the allegations contained in Paragraph 67. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

68. Defendant denies the allegations contained in Paragraph 68. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

69. Defendant denies the allegations contained in Paragraph 69. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

70. Defendant denies the allegations contained in Paragraph 70. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

71. Defendant denies that it is engaged or involved in interstate and foreign commerce. Defendant admits that it has agents and employees who represent employees of employers in the United States and Canada.

72. Defendant denies the allegations contained in Paragraph 72. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

73. The allegations contained in Paragraph 73 have no applicability to any of the issues of this case, Plaintiffs having proceeded by a temporary restraining order rather than by an order to show cause. Said paragraph does not require an answer.

Answering the second separate and distinct claim or cause of action, Defendant adopts by reference and answers the paragraphs referred to in Paragraph 74 of the Complaint as have been answered in the first cause of action.

75. Defendant denies the allegations contained in Paragraph 75. Further answering the said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

As further affirmative and other defenses, the Defendant states that:

1. The Plaintiffs failed or refused to submit evidence to the Credentials Committee or the Convention of any alleged illegality in electing or selecting delegates and are thereby estopped from raising the question here, and are guilty of latches.

2. Some of the Plaintiffs participated in local union elections and made no objection to the conduct of the election of delegates to the Convention from their local unions, either to their local union or to this Defendant or to the Credentials Committee or the Convention, and are estopped from questioning the legality of local union election of delegates.

3. Plaintiffs come with unclean hands since they participated in their own local elections without protest or challenge to the local elections.

4. It is difficult, if not impossible, to meet the immaterial, irrelevant and redundant allegations in the Complaint and the Court should narrow the issues at the pretrial hereof as hereafter described to the real issues which this Complaint attempts to make, i.e. (a) were the delegates chosen and seated in accordance with past practices and usage and in accorddance with the construction placed on the Defendant's Constitution by Defendant so that the Convention was legally conducted; (b) does the Court have jurisdiction to enjoin an unincorporated association from carrying on its normal business affairs when the officers of that association are not before the Court; (c) does

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the Court have jurisdiction to prohibit officers of an unincorporated association from taking office in accordance with the actions of its Convention, legal or illegal, when those officers have been denied due process in that either (i) they are named Defendants but not served with process, or (ii) are not named as Defendants. In any event, they are not before the Court and their property rights will be denied by lack of due process.

Further, in order that the issues may be narrowed at the pretrial hereof and so that the real legal issues be crystalized for the trial, the Defendant moves to strike the following portions of the Complaint:

1. That portion of Paragraph 34 beginning with the word "under" on the sixth line, to the end of the paragraph, on the grounds that the allegations are conclusionary, argumentative and inflamatory.

2. Paragraph 35 because the AFL-CIO Constitution is irrelevant, immaterial and has no probative connection with the issues in this case.

3. Paragraph 39 because the allegations are general, loose conclusions of the pleader and do not specify the local unions who conducted illegal elections nor the facts setting forth the illegal election of the local unions. "The election of 80% of the delegates planning to attend said National Convention have been hand-picked by and with the tolerance and connivance of Defendants" is a mere conclusionary allegation with no facts to support the statement. It is difficult to answer allegations contained in Paragraph 39 and it should be striken.

4. Paragraph 40 because the same is in clear violation of Rule 9(b) of the Federal Rules of Civil Procedure that states that fraud must be set forth with particularity. Here is an alleged "rigging" of a convention election by fraud, deception, stratagem ,etc. The entire paragraph is argumentative and contains

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conclusionary opinions of the pleader and does not set forth any facts of fraud or other illegality.

5. Paragraph 41 because this paragraph contains rhetorical arguments, conclusions and opinions of the pleader and does not specify the facts upon which the conclusions are based.

6. Paragraph 42 as highly inflammatory and prejudicial and there are no facts to support the conclusions of the pleader.

7. Paragraph 43 in its entirety and subparagraphs 1 through 44. They contain allegations of alleged wrongs or misdeeds of Beck, Hoffa, Brennan and Brewster that have been committed many years ago and they have no relevance, competency or probative connection with the issues in this case. They are also redundant, scandalous matters and allegations.

8. Paragraph 44 and subparagraphs 1 through 29. They are redundant, immaterial and contain impertinent and scandalous allegations, are mere conclusions of the pleader and there are no facts alleged to support the conclusionary opinions of the pleader.

9. Paragraph 46 because the allegations contained in that paragraph are irrelevant, immaterial and, assuming arguendo, a violation of the AFL-CIO Constitution by the General Officers or the Code of Ethical Practices, has no relevancy or materiality with the issues in this case.

10. Paragraph 47 in its entirety because it is scandalou and impertinent and a mere conclusionary, rhetorical vehemence of the pleader and has no relevancy or materiality to the issues in the case.

11. Paragraph 48 of the Complaint as being redundant and a conclusionary opinion of the pleader.

12. Paragraph 49 because it contains conclusions and arguments and opinions of the pleader and is not a factual allegation but rhetoric and argument of the pleader and should not be in a complaint.

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13. Paragraph 50. The allegations in this paragraph are arguments and not facts and do not properly belong in a complaint.

14. Paragraph 54 because it is argumentative and contains conclusions of the pleader and is redundant and rhetorical.

15. Paragraph 55 because the matters alleged in that paragraph have no relevancy or materiality to the issues in the case.

16. Paragraph 56 because it is scandalous and impertinent allegations and contains immaterial matters and is argumentative.

17. Paragraph 60 because it is argumentative and does not allege any facts of what the conspiracy consists of or their means of acquiring knowledge of any conspiracy.

18. Paragraph 61 as scandalous and impertinent.

19. Paragraph 62 because the acts and misdeeds of Hoffa many years ago have nothing to do with the issues in this case.

20. Paragraph 63 in its entirety as scandalous and impertinent and containing conclusions and is argumentative.

21. Paragraph 64 in its entirety as argumentative and having no relevancy to the issues in this case.

22. Paragraph 65 because it is rhetorical, argumentative and not a factual statement.

23. Paragraph 66 because it contains conclusions, arguments and immaterial allegations.

24. Paragraph 67 because it contains immaterial, redundant and conclusionary statements.

25. Paragraph 69 in its entirety as argumentative, rhetorical conclusions of the pleader.

26. Paragraph 70 in its entirety as it is a conclusion of the pleader, argumentative and contains no facts upon which such allegations could be based and no factual allegations are set forth.

27. Paragraph 72 as highly scandalous and impertinent and having no relevancy or materiality to the issues in this case.

Respectfully submitted,

Martin F. O'Donoghue

Thomas X. Dunn

Patrick C. O'Donoghue

Girard Treanor

Counsel for Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO

DISTRICT OF COLUMBIA: ss

John F. English, being first duly sworn upon oath, deposes and says that he is General Secretary-Treasurer of the Defendant, and, as such, has read the foregoing Answer by him subscribed; that the matters set forth therein are true to the best of his knowledge and belief.

John F. English

Subscribed and sworn to before me
this sixteenth day of October, 1957.

Notary Public, D. C.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Answer" of the Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, has been served by leaving a copy hereof at the office of counsel for the Plaintiffs this sixteenth day of October, 1957.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Jack Cunningham, Thomas C. Manning,
Frank Kennedy, Andrew Boggia, George
Becker, Joseph Molloy, John McManus,
Harold Will, Steve Milone, John McGlynn,
Howard McFarland, John Olsen and
Hobart Gale,

Plaintiffs

against

John F. English, individually and as
General Secretary-Treasurer of International
Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America, AFL-CIO, Dave Beck, Daniel
J. Murphy, John J. Conlin, Sidney L.
Brennan, John T. O'Brien, Frank Brewster,
William A. Lee, Joseph Diviny, James R.
Hoffa, Einar Mohn, Harry Tevis and International
Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, AFL-CIO,

Defendants

Civil Action No. 2361-57

PRELIMINARY INJUNCTION ORDER

Upon plaintiffs' Motion for Preliminary Injunction pursuant to a Rule to Show Cause issued by this Court on the 14th day of October 1957; and upon consideration of the record, oral arguments, Findings of Fact and Conclusions of Law, it is hereby, during the pendency of this action and until determination of plaintiffs' claim for permanent injunction:

(1) ORDERED that defendant, James R. Hoffa, be and he hereby is enjoined and prohibited from taking office as General President of defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, (hereinafter referred to as INTERNATIONAL BROTHERHOOD), and it is,

(2) FURTHER ORDERED that all other persons allegedly elected to office in the said INTERNATIONAL BROTHERHOOD at its

17th International Convention be and they hereby are enjoined and prohibited from taking or occupying such office, and it is,

(3) FURTHER ORDERED that all persons allegedly elected to office in the said INTERNATIONAL BROTHERHOOD on the basis of the Proceedings of the said INTERNATIONAL BROTHERHOOD's 17th International Convention, be and they hereby are enjoined and prohibited from receiving any salary or other compensation as officers or officials of said defendant INTERNATIONAL BROTHERHOOD, and it is

(4) FURTHER ORDERED that defendants, as de facto or de jure officers of defendant INTERNATIONAL BROTHERHOOD, and those in concert with them be and they hereby are enjoined and prohibited from applying any decision, practice, usage or policy in violation of the 1952 Constitution of the said INTERNATIONAL BROTHERHOOD, and it is

(5) FURTHER ORDERED that defendants and all persons purporting to act as officers or officials of defendant INTERNATIONAL BROTHERHOOD be and they hereby are enjoined and prohibited from expending any monies from the said INTERNATIONAL BROTHERHOOD's treasury or funds, and from committing or authorizing the use of funds of any subordinate body, for any purpose in violation of the said 1952 Constitution of the INTERNATIONAL BROTHERHOOD; and it is

(6) FURTHER ORDERED that defendants and any person purporting to act as an official or officer of said INTERNATIONAL BROTHERHOOD be and they hereby are restrained and prohibited from threatening plaintiffs or any persons who signed affidavits for plaintiffs or any potential witnesses for plaintiffs, directly or indirectly; or visiting any reprisal upon them; or interfering with them in any way in the conduct of this litigation because of their status as plaintiffs, witnesses or affiants herein; or discriminating against them in any way because they have filed the complaint herein, made any affidavit herein or have given or

propose to give any testimony or evidence herein.

PROVIDED that this Preliminary Injunction Order shall not take effect unless and until plaintiffs or any one of them gives security in the sum of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained; and

PROVIDED FURTHER that this Injunction Order shall be binding only upon the parties to this action, their officers, agents, servants, employees and attorneys and upon persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

The reasons for granting this Preliminary Injunction are fully set forth in the Findings of Fact and Conclusions of Law which are hereto annexed and are hereby made part of this Preliminary Injunction Order.

/s/ F. Dickinson Letts
Judge, U. S District Court

Issued pursuant to Rule 65 of the Federal Rules of Civil Procedure this 23rd day of October, 1957, at 3:00 p.m.

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UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

NO 14,801 OCTOBER TERM, 1957

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America, AFL-CIO, et al.,
Appellants,

v.

John Cunningham, et al.,
Appellees.

Before: Wilbur K. Miller, Fahy and Washington,
Circuit Judges.

ORDER

This case having come on to be heard on the motion of appellants for a stay of the preliminary injunction order of the District Court dated October 28, 1957, or, in the alternative, for a vacation of such order, and the Court having reviewed the record and briefs and having heard the argument of Counsel; and

WHEREAS it appears to the Court that the findings and conclusions made by the District Court in support of its preliminary injunction order go further than necessary for purposes of said order, but are tentative only, and

WHEREAS upon the whole record it appears to the Court that with the exception of paragraphs four and five thereof the said preliminary injunction order may be sustained, as a proper exercise of judicial authority, without the adoption by this Court of all the findings or conclusions made by the District Court; and

WHEREAS this Court in its order of September 28, 1957, in Case No. 14,141, directed that the trial of this case be expedited, as permitted by the calendar of the District Court, without regard to the pendency of Case No. 14,141, and this Court remaining of the view that, regardless of the pendency of the present appeal, the trial of this case should be expedited;

NOW, THEREFORE, IT IS ORDERED by the Court that the aforesaid motion to stay or vacate the preliminary injunction order of the District Court be, and it is hereby, denied: PROVIDED HOWEVER, that paragraphs four and five of said preliminary injunction order reading as follows:

> (4) FURTHER ORDERED that defendants, as de facto or de jure officers of defendant INTERNATIONAL BROTHERHOOD, and those in concert with them be and they hereby are enjoined and prohibited from applying any decision, practice, usage or policy in violation of the 1952 Constitution of the said INTERNATIONAL BROTHERHOOD, and it is
>
> (5) FURTHER ORDERED that defendants and all persons purporting to act as officers or officials of defendant INTERNATIONAL BROTHERHOOD be and they hereby are enjoined and prohibited from expending any monies from the said INTERNATIONAL BROTHERHOOD'S treasury or funds, and from committing or authorizing the use of funds of any subordinate body, for any purpose in violation of the said 1952 Constitution of the INTERNATIONAL BROTHERHOOD;

be, and they are hereby, vacated and that the following be, and it is hereby, substituted therefor:

> (4) FURTHER ORDERED that the affairs of the INTERNATIONAL BROTHERHOOD be governed by the provisions of the Constitution of 1952 of the said INTERNATIONAL BROTHERHOOD, and that no amendments made at the 17th International Convention of the INTERNATIONAL BROTHERHOOD be put into effect during the pendency of this preliminary injunction order.

This order is without prejudice to an application either to the District Court or to this Court for further modification of the preliminary injunction order, upon a showing that the plaintiffs-appellees are not prosecuting the action with due diligence, or upon other proper cause shown.

Per Curiam.

Dated: November 4 1957

Filed: Jan. 23, 1958

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(Civil Division)

JOHN CUNNINGHAM, ET AL.)
Plaintiffs)
v.) Civil Action No. 2361-57
JOHN F. ENGLISH, ET AL.)
Defendants)

ORDER

It is hereby ordered by this Court that the preliminary injunction heretofore entered in this cause on the 23rd day of October, 1957 be and the same is hereby dissolved.

Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Filed: Jan. 23, 1958

(Civil Division)

JOHN CUNNINGHAM, ET AL.)
Plaintiffs)
v.) Civil Action No. 2361-57
JOHN F. ENGLISH, ET AL.)
Defendants)

STIPULATION

It is hereby stipulated by and between the attorneys for the respective parties herein that:

1. The following persons shall be made parties defendant in the above-entitled action:

Harold J. Gibbons
Gordon R. Conklin
George E. Mock
John J. O'Rourke
Thomas E. Flynn
Owen Brennan
John R. Backhus
Murray W. Miller

2. Edward Bennett Williams, Esquire, hereby appears as attorney herein for the said added parties defendant;

3. The said added parties defendant hereby adopt the answer heretofore filed on behalf of the defendants as well as the entire record in this case to the date hereof.

Godfrey P. Schmidt
Attorney for Plaintiffs

Attorney for Defendants

Approved:

Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(Civil Division)

JOHN CUNNINGHAM, ET AL.)
Plaintiffs)
v.) Civil Action No. 2361-57
JOHN F. ENGLISH, ET AL.)
Defendants)

CONSENT ORDER

This cause came on to be heard this term of court upon plaintiffs' demand for equitable relief as set out in the amended complaint filed herein, which amended complaint prays in the main for the calling of a new convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and for a new election of officers in accordance with the provisions of the International's Constitution. After 22 days of trial during which oral testimony was heard and documentary evidence received, the parties hereto have consented and do hereby consent to the entry of the decree hereinafter set out.

1. It is hereby ordered that the preliminary injunction heretofore entered in this case on the 23rd day of October, 1957 be and the same is hereby dissolved and nullified, and the amended constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America adopted at the 17th convention of the International at Miami, Florida in October, 1957 shall forthwith go into effect, provisionally in accordance with the following paragraphs of this decree, and the officers of the International elected at the convention shall forthwith take office provisionally in accordance with the following paragraphs of this decree.

2. Godfrey Schmidt, nominated by the plaintiffs, L. N. D. Wells Jr., nominated by the defendants, and Judge Nathan Cayton, nominated jointly by the plaintiffs and defendants, are hereby appointed and shall serve as a Board of Monitors for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for such period of time and with such duties as are hereinafter set out. Judge Nathan Cayton, the Monitor jointly nominated by the parties, shall serve as chairman of the Board of Monitors. A majority vote of the Monitors shall be determinative of any action to be taken by the Monitors. In the event of the inability or unwillingness to serve, or other disability on the part of any Monitor, he shall be relieved of his duties and discharged of the obligations hereunder, and a successor Monitor shall be appointed in his place by the Court upon nomination by the party or parties, as the case may be, who nominated the Monitor to whose office the successor Monitor shall be appointed. Furthermore, the Monitors are at all times subject to removal by this Court in the exercise of its discretion for any cause and are subject as officers of the Court to supervision and direction of the Court in performing these duties as hereinafter enumerated.

3. The Board of Monitors in order to insure the enforcement and protection of all rights of the individual members and the subordinate bodies of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as guaranteed by the provisions of the International constitution, in particular,

a. the right to vote periodically for elective officers,

b. the right to honest advertised elections,

c. the right to fair and uniform qualifications to stand for office,

d. the right to freedom to express views at meetings

shall counsel with the General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and make recommendations upon review of appeals taken pursuant to provisions of the International constitution.

4. The Board of Monitors shall draft a model code of local union by-laws not inconsistent with the International constitution, or model provisions for inclusion therein not inconsistent with the International constitution, which model code or provisions the General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall ~~will~~ recommend for adoption by the local unions.

5. The General Executive Board in consultation with the Board of Monitors shall review and where needed establish accounting and financial methods, procedures and controls affecting all funds and properties held, received and disbursed by or on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its subordinate bodies. All persons having custody or management of such funds or properties shall be required to adhere to the recognized legal and equitable standards and obligations imposed upon fiduciaries in the handling of such funds and properties.

6. No officer of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall

have a personal financial interest which conflicts with the full performance of his fiduciary duties as a representative of the International, nor shall he own or have a substantial business interest in any enterprise with which the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America bargains collectively, or in any business enterprise which is in competition with any other business enterprise with which his union bargains collectively, nor shall he own or have a substantial business interest in a business enterprise a substantial part of which consists of buying from, selling to, or otherwise dealing with the business enterprise with which the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America bargains collectively.

The provisions of this section do not apply in the case of an investment in the publicly traded securities of widely held corporations which investment does not constitute a substantial enough holding to affect or influence the course of corporate decision.

7. The General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall examine and review the status and condition of affiliated local unions under trusteeship to the end that trusteeships be removed and self government restored with all deliberate speed consistent with the best interests of the membership of such locals. The Board of Monitors shall examine and review the status and condition of locals where trusteeships are maintained and shall counsel with and make recommendations to the General Executive Board looking toward the removal of trusteeships where removal is consistent with the best interest of the membership of the locals.

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5. The Board of Monitors appointed herein shall serve as such for at least one year and thereafter until a new convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is held at which convention officers are duly elected and sworn; provided, however, that this Court after one year from the date of this order, in its discretion upon petition of the defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or upon petition of the Board of Monitors may discharge and release said Board of Monitors, or the Court on its own motion may discharge them at any time.

A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the General Executive Board by majority vote shall resolve to call such convention and hold such election. The Board of Monitors may recommend to the General Executive Board after the expiration of one year from the date of this order that a new convention and election be held. In all events such new convention and election of officers must be called and held within the time specified by the provisions of the constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as amended.

9. The call for a new convention and election of officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be issued in accordance with the International constitution by the General Executive Board.

a. Delegates to such convention shall be elected in strict and literal compliance with the International constitution.

b. The General Executive Board of the International shall recommend to its affiliated locals that such delegates be elected by secret ballot and, where practicable, under the supervision of such outside agencies as the Honest Ballot Association.

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c. The examination and approval of all credentials submitted by delegates to said convention shall be made by the convention Credentials Committee and the Board of Monitors is authorized to counsel with such Credentials Committee and make recommendations to it.

10. The Board of Monitors shall receive compensation for the services performed by them in an amount to be determined by this Court, such payment to be made by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

11. The Board of Monitors shall make a report at least semi-annually to this Court and at the conclusion of its services and may make recommendations after consultation with the General Executive Board for amendments to the International constitution for proposal at the next International convention.

12. The General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall make available to the Board of Monitors such clerical and technical help as is reasonably required and necessary.

13. No reprisal of any sort or nature shall be taken against the plaintiffs or any witnesses or affiants in this case or any other person or persons because of their participation in or connection with this case and the General Executive Board shall press charges against anyone violating this section.

14. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall pay the fees of counsel for the plaintiffs and expenses incurred by those in the prosecution of this action, such fees and expenses to be determined by this Court.

Ordered this 31st day of January, 1958

F. Dickinson Letts
JUDGE

We consent:
Godfrey P. Schmidt
M. Joseph Blumenfeld
Thomas Dodd

I consent:
Edward Bennett Williams

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Filed: Sept. 12, 1958

Civil Division

JOHN CUNNINGHAM, ET AL, Plaintiffs v. JOHN F. ENGLISH, ET AL, Defendants	Civil Action No. 2361-57

PETITION FOR CONSTRUCTION, REFORMATION AND/OR MODIFICATION OF THE CONSENT ORDER AND FOR INSTRUCTIONS AND ORDERS OF COMPLIANCE

The Board of Monitors respectfully represents to this Court as follows:

1. Paragraph 2 of the Consent Order of January 31, 1958, which established the Board of Monitors, contains the following provision:

> "Furthermore, the Monitors are at all times subject to removal by this Court in the exercise of its discretion for any cause and are subject as officers of the Court to supervision and direction of the Court in performing those duties as hereinafter enumerated."

Pursuant to this provision, the Board of Monitors files this Petition with the Court and respectfully declares:

A. The status and authority of the Board of Monitors has been questioned by the Defendant International Brotherhood on the basis that the powers of the Monitors are merely advisory and recommendatory. It is understood that the Defendant International challenges the authority of the Board of Monitors to issue Orders of Recommendation, such as Order of Recommendation No. 16, a copy of which is attached as Exhibit 1, and the Supplemental Order thereto, a copy of which is attached as Exhibit 2, concerning the filing of charges against International Vice President Owen B. Brennan; Order of Recommendation No. 17, a copy of which is attached as Exhibit 3, concerning the filing of charges against Samuel Feldman, Business Agent, Local Union No. 929; and Order of Recommendation No. 19, a copy of which is attached as Exhibit 4, and the Supplemental Order thereto, a copy of which is attached as Exhibit 5, concerning the filing of charges against Glenn W. Smith, President, and H. L. Bolling, Secretary-Treasurer, Local Union No. 515. Through its attorneys, the Defendant International Brotherhood has stated, in effect, that the Board of Monitors has no authority to request a "cleanup" of the International; that the Board has no authority to issue Orders of Recommendation to General President Hoffa and the General Executive Board that charges be filed against officers and members who are alleged to have committed acts involving wrongdoing, corruption and racketeering or other acts violative of the International Constitution and their oaths of obligation; and that the authority of the Board of Monitors is limited merely to "appellate review".

B. The Board of Monitors declares that it is of the view that the Consent Order was entered into with the definite understanding that, if the Defendant International should fail to comply with a recommendation of the Monitors, the Court would have the power to compel the Defendant International and its officers to comply with the recommendation.

C. The Board of Monitors reports to the Court that there has not been full compliance with the following Board Orders of Recommendation:

(1) Order of Recommendation No. 4, a copy of which is attached as Exhibit 6, concerning trusteeship proceedings against Local Union No. 107 (see also the letters of Chairman O'Donoghue to General President Hoffa dated July 9, 1958, and September 2, 1958, copies of which are attached as Exhibits 7 and 8).

(2) Order of Recommendation No. 11, a copy of which is attached as Exhibit 9, with respect to the audit of the books of Local Union No. 245 (see also the letter of September 2, 1958, from Mr. Theodore Herz of Price Waterhouse & Co. to Chairman O'Donoghue, a copy of which is attached as Exhibit 10, and the September 2, 1958, telegram of Mr. A. J. Round, Acting Secretary-Treasurer of

Local Union No. 245, to the Board of Monitors, a copy of which is attached as Exhibit 11).

(3) Order of Recommendation No. 12, a copy of which is attached as Exhibit 12, with respect to the audit of the books of Local Union No. 808 (see also the August 11, 1958, letter of Mr. Theodore Herz of Price Waterhouse & Co. to Chairman O'Donoghue, a copy of which is attached as Exhibit 13).

(4) Order of Recommendation No. 14, a copy of which is attached as Exhibit 14, concerning the Price Waterhouse report of July 22, 1958, a copy of which appears as Exhibit 29 of the Initial Report of Board of Monitors.

(5) Order of Recommendation No. 16, a copy of which is attached as Exhibit 1, and the Supplemental Order thereto, a copy of which is attached as Exhibit 2, concerning the filing of charges against International Vice President Brennan.

(6) Order of Recommendation No. 17, paragraphs 1, 2 and 4, a copy of which is attached as Exhibit 3, concerning the filing of charges against Samuel Feldman, Business Agent of Local Union No. 929.

(7) Order of Recommendation No. 18, a copy of which is attached as Exhibit 15, concerning the publication of Orders of Recommendation in The International Teamster (see also the letters of Chairman O'Donoghue to General President Hoffa dated August 27, 1958, August 28, 1958, and September 2, 1958, copies of which are attached as Exhibits 16, 17 and 18).

(8) Order of Recommendation No. 19, paragraphs 3 and 4, a copy of which is attached as Exhibit 4, concerning the filing of charges against Glenn W. Smith, President, and H. L. Bolling, Secretary-Treasurer, Local Union No. 515.

(9) Order of Recommendation No. 20, a copy of which is attached as Exhibit 19, concerning Rules Governing the Conduct of Local Union Nomination Meetings and Elections of Officers.

(10) Order of Recommendation No. 21, a copy of which is attached as Exhibit 20, concerning the illegal merger of Local Union No. 183 with Local Union No. 959.

The Board of Monitors attaches as Exhibit 20(a) all additional correspondence that has passed between the Board and the International with respect to the above Orders of Recommendation.

The Board of Monitors also reports that the International General Executive Board violated the Consent Order by deciding the Joint Council 13 election appeal without consulting with the Monitors; that the International did not comply with the Board's request of July 3, 1958, that no notice of decision be issued concerning the action taken by the General Executive Board in violation of the Consent Order (see Chairman O'Donoghue's letter of July 3, 1958, to General President Hoffa, a copy of which is attached as Exhibit 21); and that the International failed to comply with the requests made in Chairman O'Donoghue's letter to General President Hoffa, dated August 6, 1958, a copy of which is attached as Exhibit 22, and failed to comply fully with the recommendation of its General Counsel that a retraction be printed in the September issue of The International Teamster.

D. Under paragraphs 8 and 9 of the Consent Order, the Board of Monitors may recommend to the General Executive Board, after the expiration of one year from the date of the Consent Order, that a new convention and election be held. The basic objective of the Consent Order is the holding of a new convention so that de jure officers may be elected for a definite term under the International Constitution. The officers now serving as International officers are provisional or de facto officers. In its first Report to this Court, on pages 40-41, the Board of Monitors made the following statement:

> "Although no official communication has been received by the Board of Monitors from the International Union concerning the holding of the next convention, the Monitors have heard that it is proposed to hold a convention in February, 1959. A majority of the Board of Monitors desire to

> state to the Court at this time that compliance with various provisions of the Consent Order dealing with the following subjects is a condition precedent to the holding of a convention: (1) the adoption and publication of model by-laws or provisions for insertion in local union by-laws; (2) the establishment of a reporting control system between the International and the local unions in order that the standards for good-standing membership in the local unions and the International will be uniform; (3) recommendations of amendments to the International Constitution; and (4) the release of the trusteed locals . . ."

Since the filing of this Report, the Monitors have been informed that the General Executive Board, within the near future, will issue a call for a convention to be held in February, 1959. The Board of Monitors is of the opinion that a convention cannot properly be held at that time because of the abovementioned prerequisites; namely, the drafting of the new Constitution and model by-laws, the release of the trusteed locals under proper supervision of the Board of Monitors, and the installation of a proper record-keeping system in the International office to show the good-standing membership of each member of the International. The Board of Monitors believes it is essential that some permanent system of keeping records of the good-standing membership of each member of the International be established in the International office so that the number of good-standing members in a local union will be readily accessible to the Board of Monitors. Further, Price Waterhouse & Co. has reported that it is essential to good auditing that better record-keeping be established in the International office. In order for the basic objectives and purposes of the Consent Order to be properly effectuated, it is absolutely necessary that the convention be held only after modern auditing and reporting procedures are established to insure that the convention reflects a truly democratic expression of the view of the membership.

E. The Board of Monitors reports to the Court that, to insure that the Monitors can acquire the necessary knowledge and secure the necessary documents upon which to base its recommendations to the International Union, subpoena powers are essential.

2. In view of the declarations made in Paragraph 1 above, the Board of Monitors respectfully prays that the Court:

A. Instruct the Board of Monitors whether the Monitors have the power to issue Orders of Recommendation, such as Orders of Recommendation No. 16, No. 17, and No. 19, and the Supplemental Orders to No. 16 and No. 19.

B. Construe or reform the Consent Order and insert the following provisions in the Order:

> "After the Board of Monitors issues an Order of Recommendation and after service of the same upon the International and failure on the part of the International and its officers to carry out and comply with the terms and conditions of any Order of Recommendation, the Board of Monitors shall promptly file a petition with this Court for enforcement of the Order of Recommendation. The Court shall compel compliance with all Orders of Recommendation unless it finds them unreasonable."

C. Issue Orders to the Defendant International Brotherhood, its General Executive Board and its officers to comply with the Board of Monitors' Orders of Recommendation No. 4, No. 11, No. 12, No. 14, No. 16, No. 17, No. 18, No. 19, No. 20 and No. 21, and the Supplemental Orders to No. 16 and No. 19 and to publish a retraction, together with a complete statement of the facts, with respect to the Joint Council 13 election appeal.

D. (1) Construe or modify paragraphs 8 and 9 of the Consent Order and insert the following provision in the Order:

> "The time for the convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International, with the exact time of holding the convention being subject to the final approval of the Court."

(2) Interpret or construe paragraph 9(c) of the Consent Order and instruct the Board of Monitors to pass upon the credentials of any and all delegates to the convention and to set up procedures whereby the Monitors can conduct hearings on protests relative to the legality of the election of delegates prior to the convention before

E. Insert a provision in the Consent Order to the effect that the Board of Monitors possesses subpoena powers under the terms of Rule 53(d) of the Federal Rules of Civil Procedure.

F. Interpret or construe paragraph 5 of the Consent Order and instruct the Board of Monitors (1) whether the provisions of paragraph 5 are mandatory and require the Defendant International Brotherhood to adopt reporting and recording procedures and controls, such as were recommended by Price Waterhouse & Co. in its report of July 22, 1958, a copy of which appears as Exhibit 29 of the Initial Report of Board of Monitors, and by the Board of Monitors in Order of Recommendation No. 14, a copy of which is attached as Exhibit 14; and (2) whether the accounting, financial and reporting and record-keeping procedures which should be established are to be permanent or merely temporary in nature, that is whether these procedures can be completely abolished after the term of office of the Board of Monitors has expired.

G. Grant such other further relief as may be necessary and may seem to the Court meet and proper.

H. Set a date for an immediate hearing on this petition.

Respectfully submitted,

Martin F. O'Donoghue, Chairman

Godfrey P. Schmidt

Service of this Petition is acknowledged this _____ day of September, 1958, and the attorney for the Plaintiffs hereby agrees that this decree be construed or modified as prayed for in the Petition.

____
Attorney for Plaintiffs

Personal service of this Petition on the Defendant International Union this _____ day of September, 1958, is hereby acknowledged.

____
Attorney for Defendant
International Union

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

JOHN CUNNINGHAM, ET AL.,)
Plaintiffs) Civil Action No. 2361-57
v.)
JOHN F. ENGLISH, ET AL.,)
Defendants)

MEMORANDUM OF MEMBER SCHMIDT CONCERNING THE "MEMORANDUM OF MEMBER WELLS CONCERNING PETITION FOR CONSTRUCTION, ETC."

It seems appropriate to insert in the records of the Board of Monitors my disagreement with certain statements appearing in Mr. Wells' written discant from the majority "PETITION FOR CONSTRUCTION, REFORMATION AND/OR MODIFICATION OF THE CONSENT ORDER AND FOR INSTRUCTIONS AND ORDERS OF COMPLIANCE."

The Consent Order is indeed an *agreement* or *binding Contract* between the parties to this case. It is also much more, it is a decree of a Court of Chancery establishing *chancery receivers with limited powers*. The "modifications" and "reforms" against which Mr. Wells protests are *verbal* and not semantic. They are proposed for *clarifying* and expressing less *ambiguously* the implications of the express language of the Consent Order and the intentions of the parties who framed the Consent Order and who executed it.

Nor is it correct to suggest, as does Mr. Wells in his Memorandum, that the Consent Order, finally and for all purposes, "concluded the adversary phase of the litigation," It was thoroughly understood that the Consent Order (which itself is clear on this point) was *not* a *settlement* but a method for "shortening the trial." It was emphatically understood and expressly conceded by all of the parties. that the plaintiffs reserved the right to go back into Court for the reinstatement of the preliminary injunction if the defendants violated the Consent Order. Plaintiffs also explicitly reserved, without any modification or diminution, their original contention that the present provisional officers were not validly elected.

As to the convocation of a new International Convention at this time, I submit that it was the intention of the parties (and it was their statement in the Consent Order) that the "call" for the convention could not be made by either party prior to the expiration of one year from January 31, 1958, however, I agree with Mr. O'Donoghue that the language involved is ambiguous. This can easily be demonstrated if the syntax of the two questions involved is analyzed by diagrams in the fashion taught by leading grammarians, (See the amended diagrams) The two sentences involved are:

> "A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the General Executive Board by majority vote shall resolve to call such convention and hold such election. The Board of Monitors may recommend to the General Executive Board after the expiration of one year from the date of this order that a new convention and election be held." (Emphasis added)

The amended diagrams will show the two alternative readings which constitute the ambiguity. If the conjunction "when" in the first sentence introduces an adverbial clause, one reading is possible (although it is a very distorted and self-contradictory reading). If, on the other hand, the conjunction "when" introduces an adjectival clause, modifying the noun, "time," then the first sentence will receive its proper interpretation. In other words, the convention and election shall be held at any time "after the expiration of one year from the date of this order" then or at which time ~~the General Executive Board shall resolve to call a convention and hold an election~~; subject, of course, to what the Monitors recommend after they consult with the provisional General Executive Board. ~~To render this first sentence in a manner~~ which constitutes the dependent clause as an adverbial clause would mean that the convention and election shall be held (without any qualifications) when the General Executive Board shall resolve to call a convention and hold an election. It is precisely in this respect that the Williams' reading of the first sentence is incorrect and inconsistent. Apparently Williams concedes that the election may not be held until after the expiration of one year from the date of the Consent Order. But he takes the position that the "call" may be resolved upon by the General Executive Board prior to the expiration of that year. The same hermeneutics which justify a veto of an election and convention before one year after the date of the Consent Order permits issuance of a "call" only after the expiration of one year from the date of the Consent Order. In this connection the only possible construction of the second sentence (whose diagram is also submitted herewith) lends confirmation to the construction just made of the first sentence. There is an obvious and intended similarity between the prepositional complex (contained in the first sentence) reading "at any time after the expiration of one year from the date of this order" and the prepositional complex (appearing in the second sentence) reading "after the expiration of one year from the date of this order." It is clear from the second sentence that the Monitors' Board may recommend a new convention and election only after the expiration of one year from the date of the Consent Order. Unless this second sentence is to be regarded as a nullity to be evaded by a "call" prior to the expiration of this year-long period, the "call" of the convention as well as the holding of the election must, pursuant to the first sentence in its full context, be deferred until the expiration of that year-long period.

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Sentence one in effect says that a convention and election "shall be held" at any time "after the expiration of one year from the date of this order." (January 31, 1958) Now, it is clear from the language of the Consent Order that the parties did not intend to leave the matter so indefinitely. In the first sentence they determined the generality of the complex prepositional phrase underlined in the quotation set forth above by appending to the word, "time", an adjectival prepositional phrase: After the expiration of one year from the date of this order." They also appended an adjectival clause which modifies the noun, "time", and which specifies, to a certain extent, the vagueness of the words "at any time." That adjectival clause reads "When the General Executive Board by majority vote shall resolve to call such convention and hold such election."

The reading which Mr. Williams makes of this first sentence changes the adjectival clause just quoted into an adverbial clause modifying the verb, "shall be held." In making this change and in thus creating an ambiguity, Mr. Williams' present reading does violence to the ordinary meaning of the word, "when" (because according to his reading it means "of now"); and his reading also necessarily implies an interpolation of the adverbial phrase like "at any time" to modify the verb "shall resolve."

The point I am trying to make is that the ambiguity arises from two incompatible readings; the significance of the clause "when the General Executive Board shall resolve by majority vote to call such convention and hold such election," one of which makes it an adjectival clause and the other an adverbial clause. If it is an adjectival clause it means that the convention shall be held and the resolution to issue the "call" can be made only after the expiration after one year from the date of the Consent Order. If it is an adverbial clause, it might, on being tortured and twisted, mean that the convention may be held after the expiration of one year but the General Executive Board may vote to "call" the convention prior to one year.

At the time of the drafting of the Consent Order, the parties intended to permit the action of the Board of Monitors to serve as a check upon the action of the provisional General Executive Board and vice versa. It was a system of checks and balances. I was afraid that Mr. Hoffa would call the convention prematurely; and Mr. Williams was afraid that I would want to continue the Monitorship unduly. The compromise was that each party could ask the Court for a convention after the expiration of one year but the other party could be heard on the application.

I quite agree that improvement in the affairs of the Teamsters must in the end arise from the will and action of the Teamster membership, not from actions or Courts or Congressional Committees. However, there are so many dictatorial barriers to an expression and implementation of the Exec will of the Teamster membership today, that no fair election or International Convention can be had unless those barriers are removed. That is precisely the reason why the majority of the Monitors is unwilling to approve a convention at this time.

Nor has Mr. Wells correctly stated my position as attorney for the plaintiffs in this case. If not true that these plaintiffs "sought only a new convention***." They did, indeed, seek a new convention of honestly elected delegates truly representing the will of the membership. But they sought something else in addition, as is clear from Section 2, page 27 of the printed complaint which reads as follows:

> 1. This court appoint a receiver or board of receivers, a master in equity or members in equity authorized
>
> (a) To devise and establish, pursuant to the IBT Constitution, fair and sound procedures for elections by the members of local unions, wherein and whereby said local union members either (1) authorize by fair and secret ballot the local union's executive board to elect proper delegates, qualified as such and

as members of the International Organization for attendance at and for voting in a National Convention called pursuant to the IBT Constitution to elect proper and eligible members as General Officers of the International Organization; or (II) themselves, by secret ballot and under fair voting procedures, elect delegates to attend and vote at such National Convention;

(b) to supervise compliance with the IBT Constitution and the AFL-CIO Constitution during the intra-local balloting and during the National Convention;

(c) to confine his or their supervision and authority to enforcement and lawful application of said Constitutions for the purposes of said National Convention election and the intra-local elections which must precede that election, without any attempt at imposing on any member or subordinate body of the International Organization the judgment or preference of said receiver or receivers, master in equity or masters in equity;

(d) to do the aforesaid things with all dispatch and expedition consistent with their being done well under the IBT Constitution and the AFL-CIO Constitution and in accordance with the objectives of said Constitutions; and to return the full management of the affairs of the International Organization to the General Officers duly elected at such National Convention convened pursuant to the Order of this Court; and

(e) to obtain the sworn testimony of witnesses from the various locals affiliated with the International Organization for the purpose of ascertaining from such witnesses or from documents in their control a true and accurate account of how the "delegates" to the coming National Convention have been selected;

(f) to order payment, out of the general treasury of the International Organization, of the expenses and disbursements of this litigation. Including reasonable attorneys' fees and the fees and charges of masters and receivers and all incidental expenses incurred by them in making any investigation or conducting any election or doing anything authorized by this Court, including travel expenses or witnesses in this litigation;

(g) to require defendants to obtain from local unions sworn statements of their officers and members of their executive boards respecting the detailed procedures and methods used or tolerated by them for the selection of their "delegates" to the National Convention; and

In other words, the plaintiffs know that no election should be tolerated unless the union is first purged of its gangster elements and dictatorial practices and policies, far from trying, as Mr. Wells says "to postpone indefinitely an expression of the will of the members," the majority want that will expressed freely and without gangster domination or dictatorial imposition and also without fear of reprisal. That cannot be done until proper procedures for the conduct of fair hearings, etc, have been adopted and applied.

It is a little late to argue that procedural due process is unimportant in the administration of substantive due process. The majority of the Monitors is inconsistent in arguing on the one hand that Local Unions should be released from trusteeships and on the other hand that the International should be forbidden from releasing trusteed locals except under proper safeguards insuring intra-union democracy. As I have had occasion to write many times before in connection with the Monitorship, it serves no rational or useful purpose to release unions from trusteeship, if the net effort will be the continuing perpetuation in power of the very people who engineered the trusteeship. We, therefore, required the International to stop releasing trusteed locals until a code of fair elections (including nominations, etc.) was set up and implemented under the guidance wherever possible of some outside impartial agency. The present provisional officers are apparently afraid of such outside auspices and such fair procedures.

I have already expressed myself with respect to the authority of the Monitors to request a clean-up of the International in my memorandum submitted under the title: MEMORANDUM OF MEMBER SCHMIDT CONCERNING THE WRITTEN DISSENT OF MEMBER WELLS FROM ORDERS OF RECOMMENDATION NUMBERED 16 AND 17, VOTED BY A MAJORITY OF THE BOARD OF MONITORS. It is not necessary, therefore, to repeat my argument on that point. It will suffice to attach a copy of my said memorandum to this document.

It is not necessary for me again to explain my reasons for believing that the provisional officers have neither cooperated, nor in many instances complied, with the Monitors' wishes. Often, the words of the provisional officers when taken at their ordinary meaning signify obedience, compliance and cooperation. However, that is where the matter ends. Verbal or token performance is vastly different from actual performance.

The text of the Consent Order and the negotiations leading to its formulation convince me that the Monitors have the power and right "to consult" with

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and make recommendations to the provisional officers on any matter covered by the Consent Order expressly or by fair implication. Under this view of the Consent Order, it would be accurate to say that the Monitors have the right to consult with the provisional officers respecting intra-union democracy, elections of criminals, ethical policies and practices, sound fiscal procedures and policies, reprisals, local union by-laws, amendments to the International Constitution, and the next International Convention and the preparation therefor. I do not believe that this power of consultation is an empty power of making recommendations which the provisional officers have the right to reject for arbitrary reasons. One of the most important matters on which we as Monitors could be consulted would be the advisability of a new convention. We were in fact consulted on this subject on September 16, 1958. We pointed out in our printed Initial Report that there were certain conditions precedent to a proper International Convention. This is in line with the original complaint which I drafted and which did not ask for an immediate Convention and election. It asked for the appointment of a board of receivers or masters in equity to prepare for such a convention and election by eliminating the abuses which would constitute a barrier to a free and democratic convention. Section 8 of the Consent Order lists two powers or authorizations with respect to a new convention:

> 1. The power of the provisional officers (as qualified by the preceding paragraph numbered 3) to call a convention, after the expiration of one year from January 31, 1958.
>
> 2. The power of the Monitors to recommend a convention.

These two powers reciprocally limit one another, especially in the light of paragraph numbered 3. Each is a check on the other. On the one hand the provisional officers wanted to prevent an undue prolongation of the Monitorship. On the other hand the plaintiffs wanted to prevent another rigged election, i.e., a convention held prematurely and before the manifest barriers to a fair convention are eliminated. Otherwise, insult would be added to injury and a second convention would be as rigged as the first was.

The way Mr. Williams now construes Section 8 of the Consent Order not only violates the syntax of the first sentence in the second paragraph of Section 8 (as pointed out above); it also nullifies the second sentence entirely. If the Board of Monitors have any power to make a recommendation with respect to the Consent Order (as is also explained above), that power means nothing at all if the union, by making a previous "call," can evade such a recommendation. In other words, by the mere device of beating the Monitors to the draw and by issuing the "call" of the convention prior to January 31, 1959, Hoffa and his associates would prevent (under Mr. Williams' reading) the making of a recommendation by the Board of Monitors respecting a new convention and election. Such a reading nullifies the sentence giving the Board of Monitors power to recommend a convention. Actually, only after the expiration of one year from the date of the Consent Order will the Monitors be in a position (by the terms of the Consent Order) to make a recommendation respecting a new convention. The same is and should be true of the provisional officers. Each (the G.E.S. and the B. of M) has the right to exercise the power given in the first two sentences of the second paragraph of Section 8 of the complaint. Otherwise these sentences are a fraud. It will then be up to the Court to decide whether the recommendation of the Board of Monitors or of the G.E.S. will be enforced or not. It could conceivably happen (although it is not likely) that the Board of Monitors might make a recommendation in line with the wishes of the provisional officers. In any event, the first sentence of the second paragraph of Section 8 of the Consent Order forbids the General Executive Board from issuing a call for the convention and holding an election until "after the expiration of one year from the date of this order."

This was certainly the understanding of the thirteen plaintiffs from the beginning. I thus explained the matter to the plaintiffs before I elicited their consent to the Consent Order. So did Dodd and Blumenfelt as 12 of the 13 plaintiffs today vividly recall. The thirteen plaintiffs, in the first week or two of

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of February, published a document entitled: "13 Points from the 13 Teamsters Rank and File Committee". In that booklet their understanding of the Consent Order was set forth. Among other things they said: "We complained that because the 17th Convention was rigged, our million and a half members ought to get a new and fairly conducted convention . Under the Court Order we will, after a reasonable cooling off period, get such a convention and it will be under Court supervision." (Emphasis added)

"1. We complained that because the Seventeenth Convention was "rigged", our million and one-half members ought to get a new and fairly conducted convention. Under the Court order we will, after a reasonable cooling-off period, get such a convention, and it will be under Court supervision.

3. We said that we should get honest and fair elections of convention delegates from the 891 locals affiliated with the International; because we contended that the delegates to the Seventeenth Convention were not properly selected as required by the consitution. Under the settlement we get new secret elections of delegates pursuant to Court imposed standards assuring intra-union democracy.

5. We complained of intra-union dictatorship and the resultant denial of democratic and constitutional rights of members and subordinate bodies. The Consent Order forbids such dictatorship, establishes industrial democracy within our union and provides a watchdog committee of Court officers to enforce the constitution and the Order.

7. We complained that one of the aspects of intra-union dictatorship which needed correction was the way constitutional amendments were railroaded to adoption at conventions without due deliberation and fair balloting. Our settlement in this connection was better than we could have expected from litigation. Court officers called Monitors have a right to propose constitutional amendments; and such proposals must be submitted to the delegates at the next convention for their decision. This remedy goes beyond persons to the system itself. Similarly, our settlement permits the Board of Monitors, as Court Officers, to propose a model code of by-laws for local unions affiliated with the Teamster International; and the General Officers of the International are required to recommend to the Locals adoption of such by-laws.

8. We complained that local unions were put into trusteeship and deprived of autonomy in an arbitrary fashion often for the purpose of perpetuating the power of International Officers. Our settlement requires the General Executive Board to review the status of all trusteed Locals and to take steps to restore them to autonomy as quickly as this may be done with due regard to the welfare of the members involved. Moreover, the Board of Monitors is given the power to recommend the removal of trustees and the restoration of self-government to trusteed Locals with all deliberate speed consistent with the best interest of the Locals.

10. We complained of specific abuses which denied to rank-and-file members any controlling voice in their own unions, International and Local. The Consent Order expressly and particularly requires respect for the following rights:

(a) The right of members to vote periodically for elective officers.
(b) The right to honest, advertised elections.
(c) The right to fair and uniform qualifications to stand for office.
(d) The right to full and court-protected freedom to express views at meetings.
(e) The right to have convention delegates elected in strict and literal compliance with the International Constitution.
(f) The right to secret balloting for the election of delegates under the auspices, where practicable, of some outside agency, such as the Honest Ballot Association; and the General Executive Board is under a duty to recommend respect for such right.

(g) The right to honest and impartial functioning of the Credentials Committee of the next convention under the supervision of the Court acting through its Board of Monitors.

11. As Court Officers, the Monitors are accountable to the Court and may be removed by the Court in its discretion if they are guilty of any misconduct. They have the inherent right under the Consent Order to seek instructions, interpretations, and remedies from the Court where unanticipated problems arise or where their recommendations are arbitrarily rejected in violation of the language and fair implications of the Consent Order.

12. The Court's jurisdiction continues; our case is not closed. If there is serious violation of the Consent Order by the defendants (and under the settlement we have added to the case, as new defendants, all of the provisional officers), the Court has the power, on proper application and notice, to reinstate the preliminary injunction or to grant such other remedy as its reasonable discretion dictates."

Mr. Dodd and Mr. Blumenfelt were at that time given copies of the booklet containing the foregoing language. It is my distinct recollection that they approved the interpretation thus made. No one on behalf of either the plaintiffs or the defendants ever challenged that interpretation since its publication in the first or second week of February, 1958.

Dated: September 29, 1958.

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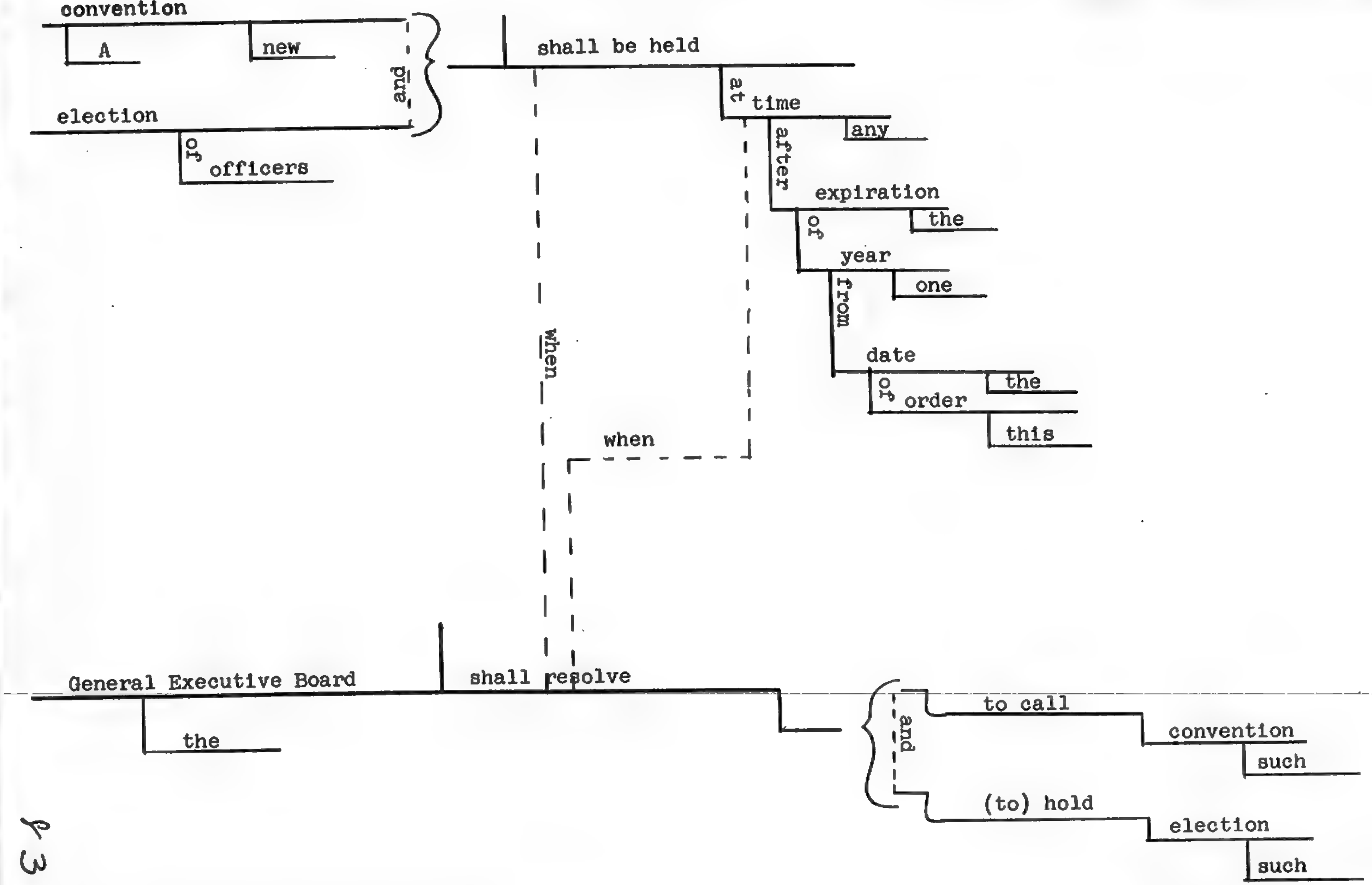
DIAGRAM OF THE FIRST SENTENCE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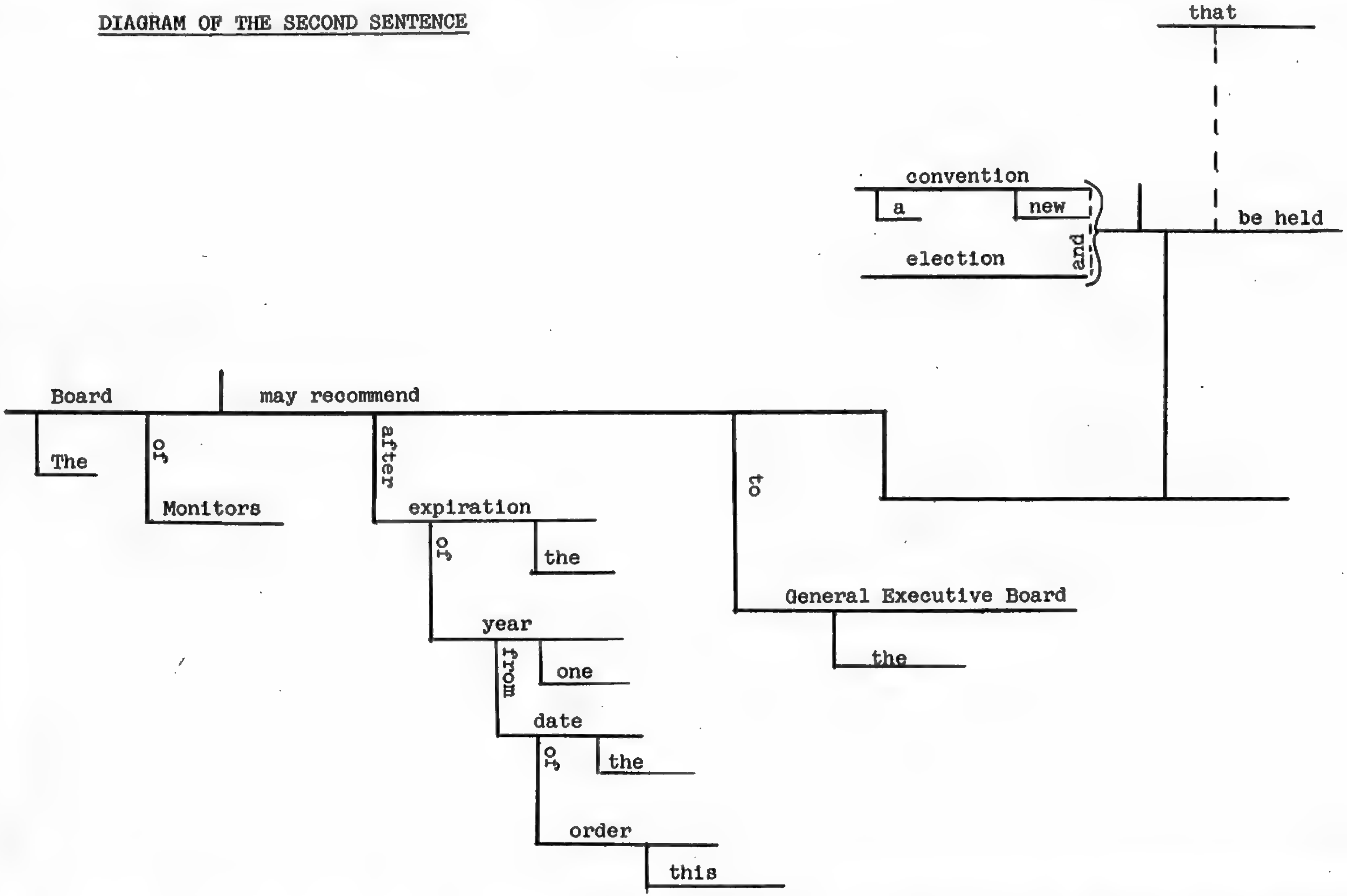
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Filed Sept. 29, 1958

(Civil Division)

JOHN CUNNINGHAM, ET AL.)

Plaintiffs)

v.) Civil Action No. 2361-57

JOHN F. ENGLISH, ET AL.)

Defendants)

MOTION OF DEFENDANT INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA FOR REMOVAL OF GODFREY P. SCHMIDT AS MONITOR

Comes now the defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and respectfully moves the court pursuant to the provisions of paragraph 2 of the Consent Order entered herein on January 31, 1958 to remove Godfrey P. Schmidt as Monitor for the following reasons:

1. While serving as monitor under the provisions of the Consent Order heretofore referred to, Godfrey P. Schmidt has continued to represent employers in collective bargaining negotiations with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Schmidt's representation of employers having contractual relationships with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America presents such a direct and

clear conflict of interest on his part as to disqualify him from further service as a monitor pursuant to the court order.

2. In the representation of the plaintiffs in this case, Schmidt solicited and received large contributions from employers and employer groups, some of whom were in contractual relationships with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and all of whom had interests directly adverse to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The solicitation and receipt of these contributions constituted a violation of 29 U.S.C. §186, the pertinent provision of the Taft-Hartley Act. Furthermore, receipt of these contributions created a relationship between Schmidt and the contributing employer groups inconsistent with and adverse to the performance of his duties as a monitor within the purview of the Consent Order.

3. On February 24, 1958, Schmidt through counsel presented for payment a claim for expenses allegedly incurred by him in the prosecution of this action. Such claim was presented by him for payment by the defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and amounted to $61,128.35. Defendant resisted payment and ultimately a hearing was held to determine the amount of recompensable expenses incurred by Schmidt. After

hearing, this Court ordered defendant to pay Schmidt $5,622.20. The disparity between the amount claimed and the amount awarded after hearing demonstrates an attitude of mind toward the treasury of the defendant union wholly incompatible with his obligations as a court appointed monitor.

4. Since assuming his duties as monitor, Schmidt has presented expense accounts to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for payment which have consistently included improper items. The expense accounts of Schmidt as the result of the inclusion of these improper items have been double those presented by the other monitors and reflect a continuing attitude on the part of Schmidt toward the treasury of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America wholly incompatible with his obligations as a court appointed monitor.

5. Since assuming his duties as monitor, Schmidt has continued to act as an advocate and partisan spokesman for various groups within the International Union in a manner wholly inconsistent with his obligations as a court appointed monitor. He has participated in the drafting of charges against officers of the Union, knowing that his duties as a monitor call for him to pass ultimately on the merits of the case by way of recommendation to the General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of

America. He has placed himself in the position of acting as prosecutor and judge.

6. During the whole period of Schmidt's monitorship, despite the requests of the chairman, the court, and his own promises to the contrary, he has independently and on his own caused publication of stories designed to embarrass the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and frustrate it in complying with this order and further designed to stimulate dissension and disorder, thereby undermining the cooperation of the monitors and the officials of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

7. Since assuming his duties as a monitor, Schmidt independently and on his own and without the knowledge of the other monitors has made reports and turned over information to the Senate Select Committee on Improper Activities in the Labor Management Field on matters directly within the jurisdiction of this Court, for the purpose of embarrassing and harrassing the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, creating dissension and disorder and undermining the cooperation necessary for the successful effectuation of the Consent Order.

8. Since assuming his duties as a monitor, Schmidt has made public statements on the right-to-work laws and on

peaceful picketing which are so adverse, inconsistent and incomptabile with the position taken by all organized labor as to destroy the confidence of the members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in his motivations.

And for such other reasons as will appear to the court in oral hearing on this motion.

Defendant requests an oral hearing and the opportunity to present testimony on this motion.

/s/
Edward Bennett Williams

/s/
Raymond W. Bergan
Attorneys for Defendant
1000 Hill Building
Washington 6, D. C.

A copy of the foregoing Motion was served this 22d day of September, 1958 on Godfrey P. Schmidt, Esquire, 12 East 41st Street, New York, New York, Martin F. O'Donoghue, Esquire, Tower Building, Washington, D. C., and L.N.D. Wells, Jr., Esquire, Tower Building, Washington, D. C.

/s/ Edward Bennett Williams

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

JOHN CUNNINGHAM, ET AL,
Plaintiffs
v.
JOHN F. ENGLISH, ET AL,
Defendants

Civil Action No. 2361-57

AMENDMENT TO PETITION FOR CONSTRUCTION, REFORMATION AND/OR MODIFICATION OF THE CONSENT ORDER

The Board of Monitors respectfully requests that its Petition for Construction, Reformation and/or Modification of the Consent Order be amended as follows:

1. Insert the following declaration as Paragraph 1, F: Federal Rule of Civil Procedure 23(c) provides that notice of a proposed dismissal or compromise of a true class action shall be given to all members of the class. Although it would seem that the plaintiffs' demand for equitable relief in the instant case constitutes a true class action and that the Consent Order may constitute a compromise of the class action, no notice of the terms of the compromise was given to ~~the members of~~ the class prior to the entering of the Order.

2. Insert the following prayer as Paragraph 2, I:
Rule on (a) the applicability of the provisions of Rule 23(c) to the entering of the Consent Order and any reformation and/or modification thereof and (b) the validity of the present Consent Order.

Respectfully submitted,

/s/ Martin F. O'Donoghue
Martin F. O'Donoghue,
Chairman

Personal service of this Amendment on the Defendant International Union this 30 day of Sept , 1958, is hereby acknowledged.

/s/ EBW(b)
Attorney for Defendant
International Union

I wish to disassociate myself from the attached "Amendment to Petition for...Modification of the Consent Order" which the majority is today filing.

The majority by such filing seek to set aside and wholly frustrate the "Consent Order" which established the Monitorship. Further I am informed that Monitor Schmidt, in his capacity as attorney for twelve Teamster members, is simultaneously filing a request for the appointment of a receiver to conduct the union's affairs.

I think it unconscionable that a party to a "Consent Order", having participated in the drafting, and having signed a specific agreement which he has widely represented as "a monumental victory for rank-and-file unionists...", ~~to~~ now suggest to the Court that the agreement, and the order incorporating it be vitiated, on the asserted basis that Mr. Schmidt and the parties he represents themselves failed to notify other Teamster members whom they purported to represent of the details of the Consent Order.

Actually, wide distribution, not only to Teamster members, but to the nation at large, was given to the terms of the Consent Order; viz:

1. Copies of the Consent Order were delivered to each Teamster Joint Council and many Teamster local unions.
2. The attached "13 Points from the 13 Teamsters Rank and File Committee" was widely distributed among Teamster members and at large by Mr. Schmidt and his clients.
3. A careful summary of the entire order in layman's language was drafted by Mr. Schmidt, Judge Cayton and the undersigned, prominently displayed in the official Teamster magazine, and distributed to over one million, two hundred thousand Teamsters.
4. Wide press, radio and T.V. coverage was given to the Consent Order, and has continued over a period of more than six months.
5. Hundreds of Teamster members have presented complaints or queries to the Monitor Board, of which Mr. Schmidt has been a member.

In the face of such wide and complete notification, not a single one of the more than one million six hundred thousand members of the union has sought to set aside, alter, modify, vary, or in any manner complain of the entry of the Consent Order.

All are apparently satisfied with the order in its present terms. All, that is, except Mr. Schmidt and the twelve he represents, who now seek to disavow and vitiate their agreement on the spurious ground that they themselves failed to notify those whom they purported to represent.

I further query the propriety of the Chairman's questioning the validity of the order under which he has served and acted for several months; at least in circumstances when his office as one of counsel of record in the litigation, raised no protest either at the time of the entry of the order in February, or at the time of entry upon the office of Monitor Chairman last May.

In my view, only a member of the class allegedly represented by Mr. Schmidt and the plaintiffs, who was not notified of the Consent Order has standing to make the objection to the order which the Chairman and Mr. Schmidt are here attempting.

Moreover, I have grave question as to (1) whether this action is a "class action" of the type defined in (a)(1) of Rule 23 F.R.C.P.;[1] and (2) whether the "Consent Order" is either a "dismissal" or "compromise" within the meaning of Rule 23(c), F.R.C.P.

In any event, the only notice required by the rule is "such notice as the Court may direct". My colleagues on the Monitor Board wholly failed to heretofore suggest to the Court that notice beyond the usual recordation on the minutes of the Court be made. This was doubtless because the Court and all litigants were aware of the broad and thorough notification above specified.

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[1] As I view this action it is "several and there is a common question of law or fact affecting the several rights and a common relief is sought" within the meaning of Section (a)(3) of the Federal Rule. No notification is required in such actions.

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The unfortunate accumulation of motions, petitions, amendments etc. presently before the Court has petrified the Monitor Board, and prevents necessary action by Monitors and union officials with respect to restoration of local autonomy of some 50 local unions, the drafting of model by-laws, the proposal of constitutional amendments, and the timely holding of a convention at which the union membership through properly elected delegates can itself determine its policies and select its leadership.

The initial activities of the Monitor Board resulted as former Chairman Cayton noted, in "enlightened cooperation" from the union's provisional officers, and substantial improvement in the affairs of the union.

Monitor actions thereafter have resulted in a situation in which the Monitor majority, apparently doubtful of the propriety of its actions to date, seek to enlarge their present powers. The majority's petition of September 19 is directed to this end.

Quite transparently, Monitor Schmidt and the twelve he represents are now dubious of the Court's power to permit Monitors to usurp power not provided in the Consent Order. Accordingly, they now seek to pull the entire house down, abandon the monitorship, which originally effected careful observance of the union's constitution, and substitute a receiver to dictate the policies and collective bargaining fortunes of over one and half million Americans.

I refuse to be party to such attempt to deprive the Teamster membership of control of its own destiny. Instead, I would urge that the Monitors be instructed to proceed expeditiously to perform the functions specified in the present Order.

L. N. D. Wells, Jr.

September 26, 1958

Order, are required to pay the involved expenses. In the third place, Chairman O'Donoghue and I agreed to amendment of the Petition for Construction, etc. of the Consent Order in order that certain doubts properly and reasonably raised by Chairman O'Donoghue might be confronted squarely and disposed of. When receivers are in doubt, they should ask the Court for instructions. I, for one, did not want such an alleged infirmity in the Consent Order to come back to plague us later on.

Personally, I was never concerned with Rule 23(c) of the Federal Rules of Civil Procedure. As I have many times indicated, in writing and orally since the signing of the Consent Order, I did not regard the Consent Order as a final "compromise" or settlement. It was certainly not a "dismissal". I have always insisted that it was simply a way of shortening the trial. The action continues. I even agree with Member Wells that promulgation of the terms of the Consent Order has been made not only to Teamster members, but to the nation at large, in at least the five respects set forth in his dissent. This may be legally sufficient, if the Consent Order is a "compromise". I also agree with him that I am aware of not one single member of the Teamsters Union who, to date, has complained of inadequate notice, even if the Consent Order does constitute a "compromise".

From the beginning, I have been satisfied with the Consent Order according to its present terms and its fair implications. But I have been hugely and increasingly dissatisfied with the way it has been misinterpreted and misapplied by the Defendants and their counsel and by Member Wells himself. I have been even violently dissatisfied with the manner in which the Consent Order has been violated by the patent non-compliance and by the non-cooperation of the Defendants. Member Wells is, therefore, in error when he asserts that "Mr. Schmidt and the twelve he represents * * * now seek to disavow and vitiate their agreement * * *". I want to enforce that agreement against the wishes of the Defendants, who continuously sabotage it.

At no time did I ever raise the challenge that there was a failure to notify those whom we purported to represent.

While I had no doubt myself that Civil Action No. 2361-57 is a true "class action", I share Member Wells' apparent doubts on the question whether the Consent Order is either a "dismissal" or a "compromise". I have not, however, researched the problem as yet. Mr. O'Donoghue has. Once the Chairman raised this matter in good faith, I have enough respect for his sincerity, integrity and competence to treat it seriously and to join with him in an effort to have that problem settled now, once and for all. To leave it unsettled at this time is to provide irresponsible characters like Hoffa with an obvious legalistic "out" at some future time when it suits their convenience and the exigencies of their dictatorial conspiracy to obstruct, by frivolous appeals and by legal technicalities, monitorial action. They have in the past demonstrated a facility for such slick conduct.

I spurn contemptously the inference which Member Wells draws to the effect that "the Monitor majority, apparently doubtful of the propriety of its actions to date, seek to enlarge their present powers. The majority's petition of September 17, 1958, is directed to this end". The majority's petition is, in fact, directed to no such end. It is directed to clarification and settlement of the potential difficulty which might be and is now raised under Rule 23(c), among others.

With equal vigor do I reject the suppressed charge in Member Wells' statement: "Quite transparently, Monitor Schmidt and the twelve he represents are now dubious of the Court's power to permit Monitors to usurp power not provided in the Consent Order." The innuendo is that I and the twelve I represent (along with Chairman O'Donoghue) are trying to usurp power. I have said more times than I can remember in connection with this type of objection that we are simply trying to vindicate power expressly or by fair implication packed into the Consent Order. To take Member Wells' quoted sentence literally, I am not dubious about the Court's power to

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permit the Monitors to usurp power; I am certain that the Court has no power to permit us to usurp power.

Finally, Member Wells states that he refuses to be party to an "attempt to deprive the Teamster membership of control of its own destiny". This remark I greet with a wry and mordant humor. I, too, refuse to be party to such an attempt. Indeed, I started Civil Action No. 2361-57 precisely because Hoffa, et al, by rigging the 17th Convention, did effectively deprive the Teamster membership of control of its own destiny. Nothing is a better demonstration of the manner in which Hoffa and his co-conspirators did deprive the Teamster membership of control of its own destiny than the revelation contained in the recent testimony of Pierre E. Salinger, an investigator for the McClellan Committee, in pages 4201 to 4228 of Volume 24 (September 17, 1958) of the stenographic transcript of the Hearings before the Select Committee on Improper Activities in the Labor or Management Field, United States Senate. I incorporate by reference that testimony in this Memorandum. If Member Wells will take the trouble to read that testimony, he will understand why, having taken the position which I have frequently asserted (that Mr. Hoffa and his associates are unfit for leadership of any decent union), I view with pleasure the possibility of the reinstatement of the preliminary injunction of October 23, 1957. Indeed, I am at this time considering whether I shall not ask for the reinstatement of that preliminary injunction, whether or not the Consent Order is legally defective. When I do, however, I shall not predicate my request upon violation of Federal Rule 23(c). Instead, I shall appeal to the manifold evidence which has been accumulating a demonstration of the corruption, incompetence, unfitness, noncompliance, and lack of cooperation of Mr. Hoffa and his fellow provisional officers. I always reserved, from the earliest discussions of the Consent Order, the right to seek reinstatement of the preliminary injunction if the Consent Order were seriously violated. I know of no more definite reason for vitiating the Consent Order than the many violations of that Order and the manifest impropriety of even provisional leadership in a man like Hoffa who is now confronted with two hundred sixty-three serious charges, most of which can be established by his own sworn admissions before the McClellan Committee.

/s/ Godfrey P. Schmidt
Godfrey P. Schmidt

October 7, 1958.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SEP 30 1958

JOHN CUNNINGHAM, ET AL,	)	
Plaintiffs	)	Civil Action No. 2361-57
v.	)	
JOHN F. ENGLISH, ET AL.	)	
Defendants	)	

MOTION FOR CONSTRUCTION, REFORMATION, AND/OR MODIFICATION OF CONSENT ORDER

The plaintiffs (except John Cunningham) by their present attorney move the Court to grant the prayers contained in the petition filed in this action on September 17, 1958, by the Board of Monitors for the International Brotherhood of Teamsters, a copy of which is attached hereto, and to construe, reform, or modify the Consent Order of January 31, 1958, as prayed for in said petition upon the grounds as stated therein and as follows in particular:

1. Said Plaintiffs agreed to the Consent Order with the understanding, confirmed by representations of defendants' attorneys, Mr. Edward Bennett Williams and Mr. Edward T. Cheyfitz to plaintiffs' attorneys, Mr. Godfrey P. Schmidt, Thomas J. Dodd and Joseph Blumenfeld, made during the course of the Order's negotiation in January, 1958, that under the Order there was an implied power in the Board of Monitors as officers of the Court to go back to the Court, if the recommendations of the Board were unreasonably or arbitrarily rejected, for instructions, enforcement and remedy; and that under the Consent Order the Court's jurisdiction continued and it had and retained the power on proper application and notice to take any corrective measures, appropriate to equity, including reinstatement of the preliminary injunction if the defendants' violated the Consent Order.

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2. At the time the Consent Order was first presented to the Court in Chambers in January, 1958 for the Court's required approval, plaintiffs, through their attorney, Mr. Godfrey P. Schmidt, represented and explained to the Court that under the Consent Order the Monitors were limited receivers with status as officers of the Court and with powers of receivers within the limits of the decree. This interpretation was accepted by the Court and was not disputed by any representation of defendants' attorney, Mr. Edward Bennett Williams, who was present at the discussion. Furthermore, it was made clear in the discussion with the Court that the Monitors were to have the power to go to the Court for enforcement with respect to any recommendation made by the Monitors and arbitrarily or unreasonably rejected by the provisional officers of the defendant International.

3. If the Consent Order by its express or implied terms does not conform to the above construction, there has been a mutual mistake on the part of the parties in verbalizing their agreement.

4. In the alternative, and if said prayers of the Monitors and of the plaintiffs as herein described are not granted, those plaintiffs respectuflly move this Court for reinstatement of the preliminary injunction made and entered in this case on the 23rd day of October, 1957, and for the resumption of the trial on the issues raised by the complaint herein, including establishment of a full receivership over the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and plaintiffs further pray for the appointment of an interlocutory receiver or receivers pending decision of said trial; and for such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

Godfrey P. Schmidt
Attorney for Plaintiffs
1010 Vermont Avenue, N.W.
Washington, D. C.

Dated: September 29, 1958

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

JOHN CUNNINGHAM, ET AL, Plaintiffs v. JOHN F. ENGLISH, ET AL, Defendants	Civil Action No. 2361-57

POINTS AND AUTHORITIES IN SUPPORT OF BOARD OF MONITORS' PETITION FOR CONSTRUCTION, REFORMATION AND/OR MODIFICATION OF THE CONSENT ORDER

A. Applicability of Rule 23(c)

The Board of Monitors is of the opinion that the Court should rule on the applicability of Rule 23(c) of the Federal Rules of Civil Procedure to the Consent Order entered in the present action on January 31, 1958, in view of the serious questions raised by the following points of law:

1. Rule 23(c) provides that a class action shall not be "dismissed or compromised" without the approval of the Court, and that in a true class action within the meaning of Rule 23(a)(1), "notice of the proposed dismissal or compromise shall be given to all members of the class . . . ."

2. A suit by union members as representatives of all the union membership, seeking to question the legality of the exercise of union leadership by certain officers, is an assertion of a common or joint interest in the rights of union membership, and a true class action within the meaning of Rule 23(a)(1). In Underwood v. Maloney, 14 F.R.D. 222 (D.C. Pa. 1953), members of a local union sued the President of the International and his deputy, seeking to nullify an order of supervision made by the President and to restore the control of the local to its membership. The Court held that this was

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an assertion of a claim involving a "common interest, a joint interest, on behalf of all the membership," and thus "clearly a true class action." Other cases to the effect that union members have a joint or common interest in the union are: Cross v. Oneida Paper Products Co., 117 F. Supp. 919 (D.C. N.J. 1954); Tisa v. Potofsky, 90 F. Supp. 175 (D.C. N.Y. 1950); Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 148 F. 2d 403 (4th Cir. 1945), approved in Brotherhood of Locomotive Firemen and Enginemen v. Graham, 84 App. D.C. 67, 175 F. 2d 802 (D.C. Cir. 1948), revd. on other grounds, 338 U.S. 232 (1949).

If the rights asserted here are not "common or joint" under Rule 23(a)(1), they must be "several." No authority or theory has been presented to spell out just what personal, several rights in the union administration could be asserted by each individual member. If the defendant International's theory is adopted that the present suit involves "several rights" and is not a true class action within the meaning of Rule 23(a)(1), no judgment entered in it could be res judicata except as to parties before the Court. See Hansberry v. Lee, 311 U.S. 32(1940); 3 Moore's Federal Practice, 2d ed., pp. 3470-3472. There would thus be opened the possibility of 1.6 million separate suits to contest the validity of the 1957 convention of defendant International.

The designation given a proceeding by the plaintiffs is not conclusive on the Court. Cross v. Oneida Paper Products Co., supra; 3 Moore's Federal Practice, 2d ed., p. 3423; see Clark v. E. C. Schroeder Co., 73 F. Supp. 1007, 1008 (D.C. Okla. 1947), affd. 167 F. 2d 739 (10th Cir. 1948), cert. den. 335 U.S. 815 (1948)("he did not assert a claim for the benefit of others similarly situated. But that should not be determinative if in fact and in law Clifton and/or others were suing in the previous case for the benefit of a class"). It is the "nature of the claim" which is determinative. Underwood v. Maloney, supra, 14 F.R.D. at 227. Plaintiffs clearly intended to bring a class suit; it is up to the Court to decide which type of class is involved. See Pentland v. Dravo Corp., 152 F. 2d 851 (3d Cir. 1945).

3. "Compromise" is not a term of limited meaning, and is broadly defined as any arrangement between litigants for settling their differences by mutual concessions. 8 Words and Phrases 311; Black's Law Dictionary, 4th ed., p. 359. The key factor in determining whether an arrangement constitutes a "compromise" within the meaning of Rule 23(c) is the possible adverse effect of the arrangement on other class members' causes of action. Malcolm v. Cities Service Co., 2 F.R.D. 405 (D.C. Del. 1942); cf. Piccard v. Sperry Corp., 36 F. Supp. 1006 (D.C. N.Y. 1941), affd. 120 F. 2d 328 (2d Cir. 1941). The doctrine of res judicata applies to true class actions. Supreme Tribe of Ben-Hur v. Cauble, 255 U.S. 356 (1921); 3 Moore's Federal Practice, 2d ed., pp. 3470-3472. Under the doctrine of res judicata, it would appear that after the entry of the consent decree provisionally installing the officers of defendant International, no member of the class represented by the plaintiffs before the Court could question the legality of the election of these officers, except in accord with the express or implied terms of the decree itself. A "compromise" is not inconsistent with the retention of jurisdiction by the Court for the possible entry of further orders. State v. Swift & Co., 187 S.W. 2d 127 (Tex. Civ. App. 1945)(trustees supervising management of cotton mills); St. Mary's Machine Co. v. Cook, 218 S.W. 733(Ky. 1920); Mabry v. Scott, 51 Cal. App. 2d 245, 124 P. 2d 659 (1942), cert. den. 317 U.S. 670(1942). It should be

noted that defendant International has not questioned the status of the Consent Order as a compromise.

4. In a true class action, adequate notice to all members of the class regarding a proposed compromise is mandatory. Notice and Court approval are "mandatory conditions precedent to dismissal." Cross v. Oneida Paper Products Co., 117 F. Supp. 919, 921 (D.C. N.J. 1954); see Hovenden v. Chandler, 8 Fed. Rules Serv. 23c.1, Case 3, p. 517 (D.C. Okla. 1945). The requirement of notice is an expression of public policy, and it has been held that a state Court judgment entered without such notice in a class action will not be given the effect of res judicata in a Federal Court action. Winkelman v. General Motors Corp., 39 F. Supp. 826 (D.C. N.Y. 1940). See also Robertson v. Limestone Mfg. Co., 20 F.R.D. 365 (D.C. S.C. 1957); Birnbaum v. Birrell, 17 F.R.D. 409 (D.C. N.Y. 1955); Cohen v. Young, 127 F. 2d 721 (6th Cir. 1942).

Notice under Rule 23(c) must be given of a "proposed dismissal or compromise," as a "condition precedent" to the dismissal or compromise, and so clearly it must be given before and not after the entry of the decree. Although the adequacy of notice lies generally within the Court's discretion, the notice must be broad enough to permit all interested members of the class to appear and be heard, and objecting members of the class have standing to object to the adequacy of the notice given. Birnbaum v. Birrell, 17 F.R.D. 409 (D.C. N.Y. 1955). In stockholders' suits, notice is ordinarily given by mail and publication, and advises the members of the class that (1) a suit exists; (2) a compromise has been proposed, and a copy is attached; (3) a date has been set for a hearing on the offer; (4) the Court has directed members of the class to be given notice and ordered to show cause why the compromise should not be approved; and (5) all papers in the litigation are available for examination. Hornstein, "New Aspects of Stockholders' Derivative Suits," 47 Col. L. Rev. 1, 20-21(1947); see Cohen v. Young, supra; Winkelman v. General Motors Corp., 48 F. Supp. 490 (D.C. N.Y. 1942).

5. Failure to follow a "mandatory" statutory provision renders the proceedings to which it relates illegal and void. French v. Edwards, 80 U.S. (13 Wall.) 506, 511 (1871); Escoe v. Zerbst, 295 U.S. 499 (1935); 50 Am. Jur., Statutes, sec. 20, pp. 43-44, and cases cited. A Court may on its own motion set aside a void judgment. United States v. Milana, 148 F. Supp. 152 (D.C. Mich. 1957), citing Wetmore v. Karrick, 205 U.S. 141 (1907). The general rule is that a judgment which is void cannot be cured by subsequent proceedings. 30A Am. Jur., Judgments, sec. 46, p. 199, and cases cited.

Even where parties are personally before the Court, it has been held that failure to comply with the requirement under Rule 55(b)(2) that three days notice must be given of a hearing on an application for a default judgment results in a denial of due process, and the judgment entered without such notice is void. Bass v. Hoagland, 172 F. 2d 205 (5th Cir. 1949), cert. den. 338 U.S. 816 (1949); Ken-Mar Airpark, Inc. v. Toth Aircraft & Accessories, 12 F.R.D. 399 (D.C. Mo. 1952). In cases where defendants had made clear that they did not intend to interpose a defense, failure to comply with Rule 55(b)(2) has been held not to invalidate the judgment. United States v. Borchers, 163 F. 2d 347 (2d Cir. 1947), cert. den. 332 U.S. 811 (1947); Rutland Transit Co. v. Chicago Tunnel

Terminal Co., 233 F. 2d 653 (7th Cir. 1956). As the Court stated in the *Borchers* case, however, any error involved in these instances "cannot be considered to have affected the substantial rights of the parties in view of their written statements that they did not intend to contest (p. 349)." In the present case substantial rights may be affected, as the members of the class not before the Court were never given notice of their right to object to the entry of the Consent Order. In any event, Rule 23(c) deals with a much more sensitive situation than Rule 55(b)(2), since in the latter instance the party affected is himself before the Court and has the full opportunity to protect his own interests. On Rule 23(c) the Courts appear unanimous that compliance with the notice requirement is "mandatory."

B. *Modification of Consent Decrees*

1. The inherent power of a Court of equity to modify a consent decree having continuing force, even without the consent of all the parties, was upheld in *United States v. Swift & Co.*, 286 U.S. 106, 114-115 (1932):

> "We are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions though it was entered by consent. . . . Power to modify the decree was reserved by its very terms . . . . If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need . . . . We reject the argument for the interveners that a decree entered upon consent is to be treated as a contract and not as a judicial act."

2. In determining the limits of the Court's power of modification, the test to be applied is whether the change serves "to effectuate or to thwart the basic purpose of the

original consent decree." Chrysler Corp. v. United States, 316 U.S. 556, 562, (1942). In Coca-Cola Co. v. Standard Bottling Co., 138 F. 2d 788, 790 (10th Cir. 1942), the following rule was applied:

> "On application to modify the decree, the inquiry is simply whether changes since its rendition are of sufficient importance to warrant such modification."

3. An accepted modification of a Consent Decree consists in the changing of the date by which or on which certain actions have to be performed. Chrysler Corp. v. United States, 316 U.S. 556 (1942)(postponing date on which defendant was to be free from provision forbidding dealing with finance companies, if by that date similar restraints had not been imposed on defendant's competitors); Hales v. National Land Exchange, 219 N.C. 651, 14 S.E. 2d 667(1941)(change in date of mortgage foreclosure sale).

4. The basic purpose of Paragraph 8 of the Consent Order, read in the context of the whole decree, is to provide that a new convention shall be held as soon as, but not until, the way is paved for a truly democratic expression of the views of the membership. The Board of Monitors was intended to oversee the clearing of the path to the new convention. One year was apparently the time which was originally thought would be needed for the Monitors to complete their task. For the reasons spelled out on pp. 4-5 of the Petition filed by the Board of Monitors on September 17, 1958, the Board is now of the opinion that a convention cannot properly be held at the end of one year from the date of entry of the Consent Order. Challenges to the Board's authority, noncompliance with the Board's recommendations on such crucial issues as the promulgation of new election rules, and the failure of

union leaders to take the promised initiative in ridding the union of unsavory elements have resulted in unexpected delays and obstacles. These have greatly changed and enlarged the problems confronting the Monitors in the accomplishment of their assigned tasks. In order to achieve the intended ends of the decree, therefore, it becomes imperative to modify the Consent Order so as to postpone the convention for a reasonable period and grant the Monitors sufficient time in which to fulfill their function effectively. Such modification appears wholly proper under the decided cases. It would not be unduly burdensome on defendant International. And it is essential to effectuating the basic purposes of the Consent Order.

Respectfully submitted,

Martin F. O'Donoghue

Martin F. O'Donoghue
Chairman, Board of Monitors

A copy of the foregoing memorandum was mailed postage prepaid this 10th day of October, 1958 to Godfrey P. Schmidt, Esquire, attorney for the plaintiffs, 12 East 41st Street, New York 17, New York, and to Edward Bennett Williams, attorney for defendant, International Brotherhood of Teamsters, 1000 Hill Building, Washington 5, D. C.

Florian J. Bartosic
Executive Assistant,
Board of Monitors

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(Civil Division)

JOHN CUNNINGHAM, ET AL.	:	
Plaintiffs	:	
v.	:	Civil Action No. 2361-57
JOHN F. ENGLISH, ET AL.	:	
Defendants	:	

MEMORANDUM IN RESPONSE TO MONITORS' AMENDED PETITION FOR CONSTRUCTION, REFORMATION AND/OR MODIFICATION OF THE CONSENT ORDER

In the amendment of the Petition filed by the Board of Monitors, a majority of the Board calls the court's attention to the provisions of Rule 23(c), Federal Rules of Civil Procedure, and asks for a ruling on the validity of the Consent Order entered herein on January 31, 1958.

Defendant first questionsthe propriety of raising such a question at this late date. The Board of Monitors has been in operation for more than eight months. Moreover, defendant questions the authority of the Monitor Board to raise this question and cast doubt upon the validity of the very act which gave it existence. This question is particularly apropos since none of the named parties to the action had previously expressed such doubt, nor had any of those in the "class" supposedly represented by the thirteen named plaintiffs. Notwithstanding the aforesaid improprieties of the amended petition, defendant can demonstrate that the provisions of Rule 23(c) noted in the Monitors' amendment have no application to the facts of this case and that the Consent Order was validly entered in accordance with law.

Rule 23(c) was not written in a vacuum. It was drafted, and must read, in conjunction with Rule 23(a). The pertinent provisions of the rule read:

> "Rule 23. Class Actions
>
> (a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is
>
> (1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;
>
> (2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or
>
> (3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.
>
> * * * * *
>
> (c) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraphs (2) or (3) of subdivision (a) notice shall be given only if the court requires it."

It is only in those cases described in Rule 23(a) (1) that notice of a "proposed dismissal or compromise" is required. In all other cases falling within Rule 23(a), notice is to be given only if required by the court. It becomes necessary, therefore, to consider whether the character of the right sought to be enforced herein was "joint, or common, or secondary" as in 23(a)(1), or "several" as in 23(a)(2) and 23(a)(3).

Plaintiffs' very complaint and the subsequent amendment thereto clearly demonstrate into what type of "class action" the case falls. Paragraph 19 reads:

> "19. Plaintiffs bring this action for themselves, and for all other members (so numerous as to make it impracticable to bring them all before the Court) of the International Organization and its 'subordinate bodies' similarly situated; and there are common questions of law and of fact affecting their several rights; and a common relief is sought herein; and the object of the action is the adjudication of claims which do or may affect specific property as hereinafter specified also involved in this action; and this class action is authorized by Rule 23 of the Federal Rules of Civil Procedure." (Emphasis supplied.)

There can be no doubt, merely from a reading of this paragraph of the amended complaint, that the action was intended to fall within Rule 23(a)(2) and 23(a)(3), wherein "there are common questions of law and of fact affecting their several rights," a "common relief sought" and where the object of the action is the "adjudication of claims which do or may affect specific property." The adoption of the language from Rule 23(a)(2) and 23(a)(3) could not be clearer. Not only was it so intended, but it was tried on that basis.

Ordinarily, the fact that the case was so pleaded and tried and was accepted by all parties to have fallen within a certain class would be dispositive of any contrary contention at this stage. The matter is of such moment, however, that a very brief analysis of why the case does not fall within 23(a)(1) is here warranted.

Rule 23(a)(1) lists three classes of cases, each dependent upon the character of the right sought to be enforced - joint, common or secondary. This action was clearly not "secondary" in the sense that the owner of the primary right had refused to enforce it thus giving individual members of the class such a right. That type applies most typically to the classic "stockholder derivative" action in whicha corporation, owning a right, fails or refuses to enforce it, and an individual or group of shareholders files suit to make the corporate entity enforce their rights. Typical is Ashwander vs. Tennessee Valley Authority, 297 U.S. 288 (1936). Equally clear is the fact that there was no joint right here at stake, as the right of joint tenants or the right to property held jointly by several individuals.

If this falls within Rule 23(a)(1) at all, it must involve the enforcement of a "common right." The fact that common relief is sought for persons similarly situated does not necessarily mean that the action is one for the enforcement of a common right. Kainz v. Anheuser-Busch, Inc., 194 F. 2d 737 (7th Cir. 1952). For a common right to exist, each member of the class must have a common and undivided interest. Gibbs v. Buck, 307 U.S. 66 (1939); Knowles v. War Damage Corporation, 171 F.2d 15, 83 U.S.App. D.C. 388 (1949), cert. denied 336 U.S. 914 (1949). There must be right given to the membership as a whole, not merely similar rights given individually to each member. Rank v. (Krug) United States, 142 F.Supp. 1, (S.D.Cal. 1956); Tisa v. Potofsky, 90 F.Supp. 175 (S.D.N.Y. 1950). Such is not the case. Involved herein are individual membership rights of the several members of the International Union. This was recognized by the plaintiffs when the complaint was drafted, and their case was tried on this theory. In short, this case falls outside the class described in Rule 23(a)(1) in which advance notice of compromise or dismissal is mandatory.

It is equally important to note, however, that the March issue of The International Teamster carried a lengthy exposition of the meaning of the Consent Order. This discussion, drafted by the Board of Monitors then under the chairmanship of Judge Cayton, contained a full and complete description of the

Consent Order and the powers given by the Consent Order to the Board of Monitors. The International Teamster is a magazine mailed regularly to the membership of the International Union. By this vehicle a clear description of the meaning of the Consent Order was given in layman's language, to the members of the International Brotherhood of Teamsters. Eight months have now passed during which time the Board of Monitors has been in constant operation. The Board has processed grievances, large and small, from scores of members of the International Union. Widespread publicity has attended its actions. Yet, not one member of the "class" allegedly represented by the thirteen plaintiffs has filed any protest, formal or informal, concerning the entry of the Consent Order. The original action was addressed to the equity jurisdiction of this court in an attempt first to forestall and then to set aside the 1957 convention of the International. Clearly, under all established principles of equity, even if notice were required, this court must hold that substantial compliance was had by the publication and widespread dissemination of the contents of the Consent Order to the members of this Union. It was not the responsibility of the International Union to provide this notice. Rather, primary responsibility must have rested upon the plaintiffs who purported to represent this large class. If it was incumbent upon them to notify each and every member of the class and if they failed in this responsibility, defendant International took it upon itself to provide such notification, in the most direct and feasible manner, to all members of the Union.

It was conceded by all parties when the Consent Order was entered eight months ago that this was a highly desirable conclusion to what otherwise could have been lengthy and protracted litigation. The representative function of the International Union in securing improved wages, hours and conditions for its members might have been frustrated for many months. No judgment is to be lightly set aside. Particularly is this the case when the judgment is one which so dramatically affects the living conditions of over 1,600,000 people.

When the complaint was drafted this was not the type "class action" in which notice is required to all members of the class. Notwithstanding that fact, notice was, in fact, given to the members of the class immediately after the Consent Order was entered. Neither then nor in the intervening period of months has a single individual member of the class challenged the validity of the Order.

Defendant, therefore, for the reasons stated herein and for such other reasons as will be advanced at the hearing on the several petitions and motions now pending submits that the Monitors' Amended Petition for Modification must be denied.

/s/ Edward Bennett Williams
Edward Bennett Williams

/s/ Raymond W. Bergan
Raymond W. Bergan
Attorneys for defendant, International Brotherhood of Teamsters
1000 Hill Building
Washington 6, D. C.

A copy of the foregoing memorandum was mailed postage prepaid this 6th day of October, 1958, to Godfrey P. Schmidt, Esquire, 12 East 41st Street, New York 17, New York, Martin F. O'Donoghue, Esquire, 831 Tower Building, Washington 5, D. C., and L. N. D. Wells, Jr., Esquire, 1610 National Bankers Life Building, Dallas 1, Texas.

/s/ Raymond W. Bergan

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED: Oct. 22, 19[illegible]

(Civil Division)

JOHN CUNNINGHAM, ET AL. Plaintiffs v. JOHN F. ENGLISH, ET AL. Defendants	Civil Action No. 2361-57 (Affidavit of Godfrey P. Schmidt answering Motion by Williams and Bergen to oust him as Monitor)

City, County and State of New York:

GODFREY P. SCHMIDT, being duly sworn says:

I am an attorney duly admitted to the practice of law and all of the courts, state and federal, within the State of New York and within the District of Columbia. My New York office is located at 12 East 41st Street, New York 17, New York, and my Washington office is located at 1010 Vermont Avenue, N.E. Washington, D. C. This court duly appointed me as the plaintiffs' Monitor to supervise the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, pursuant to the Consent Order duly made and filed on January 31, 1958 in Civil Action 2361-57.

1. The motion to which this affidavit is an answer is entitled a "Motion of Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America". Actually, as the motion papers reveal, it is a motion by EDWARD BENNETT WILLIAMS and RAYMOND W. BERGEN. Only implausible assumption could identify the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and these two lawyers.

2. These two lawyers and especially Mr. Williams, from my observations of the Senate Select Committee Hearings, have scarcely been representing the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. They have been constantly representing, and have been apologists for, James R. Hoffa and his Teamster friends (many of whom take the Fifth Amendment consistently). Representation of the interests of Mr. Hoffa and his friends is certainly not the same as representation of the International Organization or of its one and one-half million

members, whose rights and interest have been flagrantly betrayed by Mr. Hoffa and those in concert with him. In their unsworn motion papers Mr. Edward Bennett Williams and Mr. Raymond W. Bergen do not allege specific acts, facts and arguments to support their defamatory and conclusory condemnation of my conduct. They rely wholly on vague, unspecified and irresponsible conclusions unmistakeably part of a plan of systematic reprisals against me. Of course, defendants would never admit a campaign of reprisals; nor would they fail to take steps to hide their vengeful intention and mask its execution, as they have already done, behind such devices as frivolous appeals, bogus charges, obstructing technicalities, pretenses at honor and stewardship and similar wiles. But events and conduct, and their only rational explanations and implications, have revealed defendants' larger offensive, in which the motion to remove me plays a useful part.

ANALYSIS AND REFUTATION OF MOTION MADE BY MESSRS. WILLIAMS AND BERGEN "FOR REMOVAL OF GODFREY P. SCHMIDT AS MONITOR"

3. CHARGE #1. The first alleged ground for my removal is indefinitely couched in this language: "While serving as Monitor under the provisions of the Consent Order * * * Godfrey P. Schmidt has continued to represent employers in collective bargaining negotiations with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America." The names of no employers are given. Why representation of employers in "collective bargaining negotiations" would constitute a "clear and direct conflict of interests" is not specified. In the first place, it has been unanimously understood and agreed by all Monitors and by the defendants and their counsel that collective bargaining and labor contracts are outside the scope and purview of the Consent Order. They do not, as such, concern the Monitors. There never was a moment's doubt about this interpretation. It was a reading urged by Mr. Williams and Mr. Hoffa, themselves, as well as by the Monitors. Under the Consent Order, the Monitors have no authority whatever with respect to collective bargaining. Collective bargaining is

a process that looks toward the formulation of a collective bargaining agreement. Now an agreement is not a conflict; it is a meeting of minds. Far from being a conflict of interests, it is a concord of interests. Far from indicating opposition, this indistinct charge, in effect, indicates cooperation in a matter that lies outside of the competence of the Consent Order.

4. Moreover, insofar as this charge claims that I have represented or continue to represent employers in collective bargaining negotiations with the International Organization, it is either a gross and irresponsible error or a sheer fabrication. Nowhere in the first charge is there any language which spells out any kind of actual conflict of interests. No one reading this charge can accurately divine what its author is really charging me with in terms of concrete acts or specific conduct. There is just a bald and unsupported statement that a direct and clear conflict of interests exists. No language justifying such a conclusion is included. There is a good reason for this. No conflict of interests has, in fact, ever marred my performance as a Monitor. The malevolence or irresponsibility which dreamed up the charge is devoid of the sting of specific fact. The charge is a mere smear. It is really unworthy and incapable of detailed answers. Some of the answers were already given last June before this Court. Only in the tradition of bogus civil liberties, where a person is deemed guilty until he proves himself innocent, would such a charge, — groundless and purely conclusory on its face, place upon the one slandered by it the duty to speak in his own defense.

5. In the tradition of Western civilization, as amply illustrated by the great books of that tradition, charges ought to be precise and specific enough to give the person charged notice of the alleged misconduct. Only in this way can he intelligently plan his own defense by meeting the exact issues raised. This fair procedure was not followed in framing the Williams-Bergen charges. The very manner in which the "reasons" for my refusal were formulated (and published to the press) constitutes a reprisal.

6. The unctuously pharisaic feature of this charge of conflict of interest is best appraised in the light of one of the

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earliest discussions and agrements of the Monitors at our first and, I believe, second meetings (February 4th and February 18th, 1958). Mr. L.D.N. Wells, Jr., the Union Monitor, then frankly stated that he and his firm represented the Southern Conference of the Teamsters as well as "Dusty" Miller, one of the provisional vice-presidents. He said that he would prefer to resign from the Monitorship rather than give up that retainer. Judge Cayton and I stated that such resignation was not necessary; that there was no conflict of interest in what he had disclosed; and that the only thing all of us had to guard against was an actual conflict based on facts and issues implying opposition or inconsistent diversity of interests rather than upon mere retainer. At that time I pointed out that I did represent and would continue to represent a few employers who had been my clients for years and who engaged from time to time, in collective bargaining with several (two) Teamster Locals in New York City. Since February and until the filing of the Williams-Bergen motion, no one ever protested against either Wells' or my own representation as a "conflict of interest". Williams and his clients, as well as the Union Monitor, knew I had, professionally, been attorney for employers; and that until this case and the Lacey case, I had rarely represented labor unions. In addition, Mr. Wells had last year represented both Smith and Boling and a number of Teamster officials against some of whom, a majority of the Monitors has since taken adverse action. Mr. Wells made a full disclosure of these facts and asked Mr. O'Donoghue's and my opinion whether he should consider himself disqualified for conflict of interest. We thought not, in all of the circumstances. Mr. Wells, in addition, is frequently in conference with Hoffa and the other provisional officers and their attorneys. I say that not because I want to suggest conflict of interest on his part (I do not); but because his conduct comes closer to such conflict (without ever reaching it) than anything that can be or has been attributed to me. Why, then, am I charged and not Mr. Wells? Because I and not Mr. Wells am the victim of reprisals from Hoffa and his entourage.

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7. The Canons of Ethics of the New York State Bar Association (which are similar to the related canons in all jurisdictions) provide in Section 6 as follows:

> 6. Adverse Influences and Conflicting Interests.
>
> It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy which might influence the client in the selection of counsel.
>
> It is unprofessional to represent conflicting interest, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.
>
> The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

8. As lawyer and Monitor I have never violated that canon; I have never contended, on behalf of plaintiffs, or of the Monitors, for that which duty to any employer required me to oppose or vice-versa. I would not and did not represent the kind of employer who or whose suit required me to oppose the objectives of the Consent Order. No decent employer and no client of mine would want me as a lawyer to oppose those objectives. In my decisions and judgments, I have been guilty of no respect of person. I have tried earnestly and successfully, as my fellow monitors know, to apply the Canons of Judicial Ethics where they could conceivably be applicable to me as a Court Officer, especially Canons numbered 2, 3, 4, 6, 12, 13, 29, 31 and 35. The motion papers herein do not even allege any facts which could be construed as a violation of such Canons.

9. In order further to show indirectly but effectively the insincerity of defendants in charging me with "conflict of interest"; and in order thereby to demonstrate that the charge is in fact merely an interference with me as a Court Officer and an attempt at visiting upon me a reprisal, let me marshal some facts illustrating how out-of-character and unwonted any consideration of conflict of interest has been for the defendants and their counsel unless it be for the purpose of vexing their enemies.

(a) Neither Mr. Williams nor Mr. Hoffa has been sensitive to the distinct conflict of interest (on which United States Senators have commented adversely), implicit in the fact that Mr. Williams is General Counsel for the International Brotherhood of Teamsters and that, before the Senate Committee and before the Monitors, he constantly represents James R. Hoffa and his particular friends, rather than the International's membership. His own office associate, Edward Cheyfitz, Esq., who has frequently participated in Mr. Williams' attorneyship before this Court and with the Monitors, has recently acted as Mr. Hoffa's personal representative to the Brussels International Fair and Exposition. At the same time, I am reliably informed and believe, that he represents employers in contract with Teamster locals, namely: Continental Can, American Export, Grace Lines, and others.

(b) Moreover, if Messrs. Hoffa, Williams and Bergen are solicitous about conflicts of interest, let them give attention to the numerous serious conflicts of interest which have been characteristic of Mr. Hoffa and some of his favorite Teamster leaders and attorneys who derive fat fees from membership dues.

(c) In the recent McClellan Committee Hearings, Mr. Hoffa testified, (p. 4528 of the stenograph transcript): "I positively will never agree that it is immoral or improper for a person to have outside interests as long as it does not affect his collective bargaining."

(d) His own sworn admission before the McClellan Committee makes it clear that Mr. Hoffa had business arrangements with the two Dorfmans and with Dr. Pearlman (p. 4579). It is also clear from the McClellan Committee minutes that this tie-up between

Hoffa, the Dorfmans and Pearlman prompted the Central and Michigan Teamster Conferences to choose the Union Casualty and U.S. Life over lowest bidder, Pacific Mutual, in placing insurance for those Teamster Conferences, all of which are and have long been directly under Hoffa's control. The Pacific Mutual had bid $3.78 a month as premium with a 7.1% retention. The Union Casualty and U.S. Life had bid $3.80 per month as premium with a 17.5% retention. Nevertheless, the high bidder won the bid (p. 4562). This was true despite the fact that Pacific Mutual had assets at the time of about $377 millions with capital and surplus of $13.5 millions; while the Union Casualty had assets of $768,000 and capital and surplus of $310,000; and U.S. Life had assets of $38 million and capital and surplus of $2,250,000 (p. 4564). Nevertheless, the contract was awarded, at Mr. Hoffa's insistence, to Union Casualty and U.S. Life. (p. 4565). The result of this glaring conflict of interest was that, over a seven-year period, the Teamster Conferences under Hoffa's domination paid about $650,000 more than the Pacific Mutual had demanded; and paid in insurance commissions more than a million dollars in excess of what would have been required in dealing with any other company. I quote directly from the Minutes of the McClellan Committee some of the relevant testimony:

> MR. KENNEDY: What has been the total loss for the first three years?
>
> MR. MAYERSON: Between six hundred and six hundred fifty thousand.
>
> MR. KENNEDY: To the Welfare Fund?
>
> MR. MAYERSON: To the Welfare Fund, as compared to the cost they would have had if Pacific Mutual had been chosen. (p. 4568).
>
> * * * *
>
> MR. MAYERSON: * * * There were two sets of commissions. Commissions were paid to the Union insurance agency, which, I believe, was run by the Dorfmans, and commissions of a smaller amount were paid also to the United Public Service Corporation which was a kind of general agency run by Dr. Pearlman, who is also Executive Vice President of the company. The total commissions to both these agencies for the first seven years from April 1, 1950, March or April, I am not sure which, 1950, down through 1957, seven years, commissions of about $1,400,000 was paid to these agencies.
>
> THE CHAIRMAN: What are those, just brokerage commissions?

MR. MAYERSON: Agency commissions $1,400,000. * * * That $1,400,000 includes not only the General States, but also the Michigan Conference of Teamsters. (p. 4571).

The total premiums on the two groups together were about $58,000,000 during those seven years, about $58,000,000 in premiums and about $1,400,000 in commissions.

MR. KENNEDY: How much, under ordinary circumstances, Professor, would a commission be paid?

MR. MAYERSON: Well, to get a judgment on that, I took the commission scale of six other life insurance companies. I went back and got the commission scales they were using at this time. Commissions have come down since then, so I went back to about 1951, 1952, 1953. It seemed to me that - well, first of all, we have to split this commission figure into two pieces. The company, even though they paid $1,400,000 in commissions on the two cases, they only charged to the cases $650,000. The other $700,000 or $750,000 was not charged directly to the cases as commission. * * * On the basis of the six companies studied * * * the six companies would have paid something between $160,000 and $380,000 in commission over that seven-year period. In other words, the company scales vary. The lowest was about $160,000 and the highest about $380,000.

MR. KENNEDY: The highest of any of the six other companies you looked at was $380,000?

MR. MAYERSON: Yes sir.

MR. KENNEDY: Over this six-year period.

MR. MAYERSON: Seven.

MR. KENNEDY: How much did the Dorfmans and Dr. Pearlman receive?

MR. MAYERSON: $1,400,000.

MR. KENNEDY: So they received almost $1 million in excess, is that right?

MR. MAYERSON: Yes sir. (pp. 4572-4574).

It must be borne in mind that this genuine and crass conflict of interest concerned Union Welfare Funds.

(e) Another case of disgraceful conflict of interests as to which no action was ever initiated by defendants or by their attorneys (who are now so meticulous about falsely asserted conflict of interest on my part) is provided by the case of Louis ("Babe") Triscaro, President of Local 436 of the Teamsters in Cleveland, Ohio, a friend and supporter of Mr. Hoffa, who constantly took the Fifth Amendment, when questioned about the manner in which he, having interests in several corporations, on their behalf negotiated labor contracts with his own union. In other words, Mr. Triscaro was sitting on both sides of the collective bargaining table, something that not even the Williams-Bergen charges attribute to me, and something which can never be attributed to me. Here are some excerpts from the recent McClellan Committee minutes:

> MR. SHERIDAN: The Shaker Company, as well as the other companies that Mr. Mundie is going to mention, are all owned by Mr. Triscaro's brother, Joseph Triscaro, and his wife, Sarah Triscaro.
>
> MR. KENNEDY: Whose wife?
>
> MR. SHERIDAN: Louis Triscaro's wife, Sarah Triscaro, and his brother Joseph Triscaro.
>
> MR. KENNEDY: Does this Shaker Company have a contract with the Teamsters Union? Do you know that?
>
> MR. SHERIDAN: The Shaker does not have a contract. They had a contract in 1951 and there was a supplementary contract in 1952. Since that day there has been no contract.
>
> THE CHAIRMAN: Previously there had been collective bargaining between this Local 436 and the Shaker Sand Company?
>
> MR. SHERIDAN: Yes there had been. This would be between Louis Triscaro, representing Local 436, and his brother, representing the Shaker Company.
>
> THE CHAIRMAN: When was the extension of that contract? When did it expire?
>
> MR. SHERIDAN: May 1952.
>
> THE CHAIRMAN: There has been no contract since, as far as your records disclose?
>
> MR. SHERIDAN: That is right. (pp. 4245, 4246).

* * * *

> SENATOR IVES: Mr. Chairman, in that connection I think you might have a conflict of interests here, if they organize their companies with their own union * * *.
>
> SENATOR CHURCH: Before we proceed further, what is the ownership of the Valley Slag Company?
>
> MR. SHERIDAN: The Valley Slag Company was also owned by Mr. Triscaro's brother Joseph and his wife Sarah. (p. 4251).

* * * *

> MR. MUNDIE: For part of the year, from the Eagle Trucking Company, he (Louis Triscaro) received wages in the amount of $1,860.00. (p. 4252).

* * * *

> MR. KENNEDY: Who is that company supposedly owned by?
>
> MR. MUNDIE: It belonged to Mr. Joseph Triscaro and Louis' wife, Sarah. (p. 4252).

* * * *

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MR. KENNEDY: Mr. Louis Triscaro, according to his own income tax return, as a representative of the union, was signing a contract with the company that he owned?

MR. MUNDIE: That is correct.

* * * *

THE CHAIRMAN: You have $132,000 income there. This only adds up to thirty-some odd thousands.

MR. MUNDIE: He received $30,850 from Local 436.

* * * *

THE CHAIRMAN: Is that salary?

MR. MUNDIE: That is wages. (pp. 4253, 4254).

Neither Hoffa nor his attorneys have lifted an effective finger to extirpate such infamous conduct or characters from the Union. They spend time, money and energy fighting the Monitors, especially me.

(f) The 263 charges heretofore filed against James Hoffa by my clients present other serious instances of genuine conflict of interest, none of which ever pricked the calloused consciences of Mr. Hoffa and his associates nor motivated initiative in reform. Neither Williams nor Bergen seem to have taken any steps to bring Hoffa to book respecting these charges or even respecting the instances of conflict of interest included in such charges. Now they devoutly pretend to perceive in my conduct an undefined conflict of interest which does not in fact exist - all of which is, in these circumstances, explainable only as a reprisal against me by Hoffa _et al_. for doing my duty as Court Officer and a lawyer.

10. It is not _conflict of interest_ that really motivates this first charge; it is _conflict with Hoffa_. Louis XIV said: "L'etat, c'est Moi" and Hoffa similarly implies: "I am the Union"! (And Williams by practically identifying his retainer for Hoffa with his retainer by the International, which pays both retainers, seems to concur.) That is why Hoffa is blind to grievous conflicts of interest. He is the Union! Its and his interests coincide! These blatant conflicts of interest by Hoffa and his cohorts make it clear, nevertheless, that defendants in attacking _me_ now are not really motivated by a sincere desire to eliminate conflict of interest. They pursue me with reprisals because I do my duty as a Court Officer and attorney.

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11. CHARGE #2. The gist of the second charge upon which Messrs. Williams and Bergen urge my removal is set forth in the following language:

> "In the representation of the plaintiffs in this case Schmidt solicited and received large contributions from employers and employer groups * * * all of whom had interests directly adverse to the interests of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America."

This is either a gross and irresponsible error or a crude fabrication. It is merely a repetition of libellous charges heretofore made against me, unsuccessfully, by the renegade plaintiff, John Cunningham, who has since defected to the side of Mr. Hoffa and who has since become a welcome visitor at the Teamster Building. The Cunningham charges were heard by this Court and were in all respects dismissed, as the docket in this case shows. I never solicited and received contributions from any employers or employer groups. No reiteration of mendacities by Cunningham (a modern but stupid Alcibiades) can give substance to this groundless charge, made without oath and without specification to avoid countercharge of perjury. It is an index of ignorance of the Taft-Hartley Act that the two movants charge that the "solicitation and receipt of these contributions" constituted a violation of 29 U.S.C. Sec. 186. There was, I repeat, no solicitation or receipt by me; there was no contribution to me. But even if there had been, there would have been no violation of Section 29 U.S.C. Sec. 186, as anyone familiar with the legislative history of that Section would understand. Violation of that section is a crime, punishable by penalties therein specified. If Williams and Bergen and especially their clients seriously believed that I had been guilty of a crime, they would long since have lodged, with alacrity and enthusiasm, a complaint with the proper prosecuting agency. Their whole past conduct indicates that they are adept at this type of ad hominem retort against people they regard as hostile, especially in instances where they cannot meet charges against themselves on the merits.

12. Had I really solicited and received contributions from employers and employer groups (and I did not) such contributions per se, would not have created (as Williams and Bergen allege) a

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relationship "between Schmidt and the contributing employer group inconsistent with and adverse to the performance of his duties as a Monitor within the purview of the Consent Order." Throughout their moving papers they seem to write as if their saying something makes it true. After reading this charge I cannot even speculate about its precise meaning. It leaves the reader in the dark as to the manner in which falsely alleged solicitation and collection of funds works disqualification. In what specific respect has my conduct as a Monitor ever indicated performance of duty or acts inconsistent with or adverse to my responsibilities as a Monitor? The motion papers make no answer to this question. No self-respecting employer whom I have ever represented has any interest different from mine with respect to corrupt union leaders. The same can be said of decent union members. What Williams and Bergen are really saying is that I have so discharged my responsibilities as a Monitor as to bring me in conflict with Hoffa and the other corrupt labor leaders with whom he has consistently surrounded himself. Both as a lawyer for plaintiffs, and as a Court Officer, I would be remiss in my duty if, in all of the relevant circumstances, facts and events, I had not reached the stage of participating in this conflict by denunciation of Hoffa and his leadership. My deprecation of Hoffa must have been apparent to the Court, to the defendants and to the defendants' attorneys by the time when they with me signed the Consent Order in which I was named as one of the Monitors.

13. In any case, the second charge urged against me is really an attempt at evading the doctrine of res adjudicata. No appeal has been taken from this Court's dismissal of the Cunningham charges in all respects. The Cunningham charges included the present charge #2; and when they were tried Cunningham's attorney had a visible "assist" from Williams and Cheyfitz.

14. CHARGE #3. The third charge is another misrepresentation. It is simply not true that on February 24, 1958 or at any time I, directly or through counsel or through anyone else, ever presented for payment a claim for expenses in the amount of $61,128.35. No itemization is attempted. No oath puts the author's conscience

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where his words are. Mr. Williams knows better. The testimony of Henry Bolz and the statements of Mr. Crum demonstrated the falsity of this charge on June 27, 1958. The meetings of February 24, 1958, was arranged between Mr. Williams and my attorney, Bartley C. Crum, after Mr. Williams suggested that possibly the problem of expenses could be settled by a conference. Everything he has done since then indicates that he never at any time had any intention of settling the problem of expenses by conference. Be that as it may, my attorney believed his representation at that time and went down to Washington, D.C. prepared to discuss the manner in which expenses were to be allocated and the nature of the items of expense (because the language of the Consent Order on this subject is brief and non-informative). I was not present at this conference. Personally I welcomed it because, in earlier discussions with the accountant for the plaintiffs, with my own accountant and with Mr. Crum, we had developed a variety of competing but inconsistent theories for itemizing expenses. Were the fees and expenses of Hoguet, LoBrutto, Clark, Healy and Fried to be lumped together as my expenses? Were the standard accounting practices, as described to me by my own accountant, to be used with respect to overhead, etc? Was I to incorporate the salaries I paid to my secretaries, to my law clerk and to my lawyer associates? Was I to charge expenses as I normally do to my clients? Investigative expenses had been incurred. Were these to be allocated to the Rank and File Committee or to me? These are some of the questions that I raised with the accountants and with my lawyer. My lawyer wanted to discuss these problems with Mr. Williams. At no time was any claim made on my behalf or with my knowledge by anyone for $61,128.35 or for any similar figure. The testimony and documentation before this Court in connection with my expenses will sustain this. This is also clear from the ~~appended~~ affidavits of the two accountants, of my son Peter and of Bartley C. Crum, all of whom were present at Mr. Williams' office on February 24, 1958. My original and only application for expenses to this Court was for $9,795.53.

15. Charge #3 in support of my removal is actually worded as if I had presented this Court with a claim for $61,128.35; and as

if this Court, on a hearing of that claim, reduced my claim to $5,622.20. This misrepresentation scarcely does honor to the two attorneys, who signed the moving papers and who must have known better. It is a token of the poverty of their arguments, if they must resort to misstatement for this argument: "The disparity between the amount claimed and the amount awarded after hearing demonstrates an attitude of mind toward the treasury of the defendant union wholly incompatible with his obligations as a Court-appointed Monitor". (Emphasis mine). The disparity was between $9,795.53 and $5,622.20. It was accounted for largely by two items, one for $2,000. for my accountant and one for $1,600. for overtime dinners, etc. Both of these items constituted actual liabilities and obligations. The first was exact; the second my accountant estimated. Both are explained in the transcript of the hearings before this Court which began June 26, 1958. It is sheer mendacity to suggest that this Court cut me down from a request of $61,000. to $5,622.20. Before June 27, 1958, I had never even heard of this alleged $61,000. claim; and on that day it was simply part of Williams' questions addressed to Henry Bolz, who denied that such a claim had been made.

16. If Messrs. Williams and Bergen and their clients are sincerely concerned about an "attitude of mind toward the treasury of the defendant union", let them look into the conduct of Mr. Hoffa himself, (to say nothing of his Teamster friends) as set forth in numerous charges filed on behalf of my clients, and as established by sworn evidence before the McClellan Committee. For example, Hoffa took $330,000 of Welfare Funds and lent that money to his own attorney and to his own accountant for a private real estate deal. He lent to his friend, Mr. Dranow, $1,200,000. of Union funds. He approved the spending (out of the International's treasury) in 1957 of more than $550,000 for public relations expenses and legal fees largely made necessary by his own crooked leadership. To defend his own misdoings, he has been hiring lawyers right and left, paying them promptly and without hesitation handsome fees out of the Union treasury. The McClellan Committee minutes are evidence of this.

17. CHARGE #4. The fourth charge alleges that I have

consistently included improper items in my expense account as a Monitor. This I deny as a gross misrepresentation. Insofar as expense items are a matter of discretion, I will not defer to Hoffa's judgment or even Mr. Williams'. From the beginning of the Monitorship, I had insisted that Monitorial expenses are and ought to be the subject-matter of decision by the Board of Monitors, itself. Indeed, I clearly foresaw the time when, if Monitorial expenses were not approved by the Monitors (especially where they are discretionary), false charges of padding expenses would be preferred against me. That is why I included in Subdivision Q, on page 180, of the printed Initial Report of the Monitors a passage on this subject which is self-explanatory, and to which I respectfully refer the Court. It is stultifying to suppose that a Monitor should go to provisional officers to obtain permission to make expenditures necessary for the performance of Monitor's business. This is a matter for the Monitors in the first instance, and for the Court in the second, subject to specific objections from any party to the litigation.

18. It will be noted that Mr. Williams and Mr. Bergen do not specify the respects in which the items I have included are allegedly "improper". They do not list the items I claim. They do not itemize or identify _improper_ expenses. They simply put down a general statement which is unsworn and utterly undetailed, with an _ipse dixit_. Then, having dogmatized without proof, or oath or specification, that I have consistently included improper items, they draw the conclusion that this falsely alleged improper itemization of expenses by me reflects a "continuing attitude on the part of Schmidt toward the treasury of the International * * * wholly incompatible with his obligations as a Court-appointed Monitor." Since the filing of the Williams-Bergen motion, a majority of the Board of Monitors has approved the very expenses involved. The majority of the Board of Monitors disagrees with the Williams-Bergen dogmatism, which they want this Court to take on faith and without any specification.

19. The insincerity of this attack and its character as a mere reprisal against me, and as an interference with the

functioning of a court officer, are apparent from the manner in which Williams, Bergen, Hoffa, et al. tolerate with approval or utter passivity, wholesale bill-padding by Hoffa and his friends. The malice and mendacity of Mr. Hoffa in this very connection appear from his perjured testimony on September 18, 1958 before the McClellan Committee, pages 4516 to 4526. Mr. Hoffa's intention to smear me leaps from these pages. One admission made by him is especially interesting. He attended a meeting with Edward Cheyfitz, Esq., and John Cunningham, the renegade plaintiff, to discuss the hiring of Mr. Bob Mayhew to investigate me: "so that (as Hoffa put it) Mr. Williams, our attorney, could go to court and present his arguments as to why we should not pay the expense accounts as they were." (p. 4521). Up to that time, the International and Mr. Williams had already been rejecting legitimate Monitorial expenses which I had paid. Apparently they had no reason for this. Later they wanted to dig up a reason. They hired an investigator, or tried to hire one. They hoped that an investigator might exhume reasons "why we should not pay the expense accounts".

20. Annexed hereto as Exhibit A to form part of this affidavit is a detailed list analysis and justification of all expenses claimed by me as Monitor, including (a) those which have been paid by defendants, and (b) those which have not been paid.

21. Also, the Records of this Court include itemizations of Monitor O'Donoghue's expenses, which, although similar to mine, have not been challenged by defendants. The fact that similar expenses have not been challenged in others but only in me is so significant of the reprisal motive which runs through the entire strategy of defendants at the present time.

22. Nor is it an argument which reflects on me, that my expense account items have been double those presented by the other Monitors (except Mr. O'Donoghue). I can say without fear of effective contradiction that I have done more than twice as much work as the other Monitors (except Mr. O'Donoghue, whose expense accounts are heavier than mine). At the present moment the International owes me approximately $3,000 in expense items. A majority of the Board of Monitors considers them as proper and

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allowable expense items for the Monitorship.

(a) To show how uncustomary is the concern of Hoffa and his associates and his attorneys for padded expenses, I refer to the Sun Valley real estate deal between Hoffa, Owen Brennan (one of the International Vice-Presidents), and Henry Lower (Hoffa's friend) where, exemplifying a real conflict of interests, Hoffa and Brennan took an option to participate personally to the extent of 45% in a deal involving Union moneys, and where $500,000 of funds from Hoffa's Local 299 were mysteriously transferred to the Florida National Bank at Orlando, causing a loss to the Union of thousands of dollars in interest. Despite Mr. Hoffa's denials, the transfer was obviously made for the purpose of backing the real estate deal in which Lower, Hoffa and Brennan were interested. There is no other rational explanation. Lower did most of the leg work on this deal for the Hoffa-Brennan combine. Here is the testimony of the McClellan Committee accountant, Mr. Bellino, on Lower's expenses:

> MR. KENNEDY: Did he (Mr. Lower) receive expenses as well as that money that he got from him?
>
> MR. BELLINO: Yes. He not only received expenses, but he also received personal loans himself.
>
> MR. KENNEDY: Can you tell us the total figure of what he received in salary?
>
> MR. BELLINO: The total salary for the three-year period from 1954 to 1956, $30,550, expenses as officer and delegate's expense allowance - - - he received $5,442.00, organizational expenses, $4,489. travel expenses, $6,748., and I am now rounding out the figures - - - personal advances or loans during this period of $178,371.96. (pp. 4409-4410).
>
> * * * *
>
> MR. BELLINO: On June 22, 1956, Sun Valley issued their check in the amount of $13,900. to Joint Council 43 and noted it on the books as refunds, advance on advertising. I might say this, that the most we could find coming from Joint Council 43 is $13,600. We don't know where the other comes in. On the same day, Joint Council 43 issued its check to Local 299 (Hoffa's Local) for $6,800. and recorded it as miscellaneous expenses. Similarly, Joint Council issued its check to Local 337 (Owen Brennan's Local) for $6,800. Sun Valley withdrew from Florida National Bank $175,000. and opened an account in its name in the National Bank in Detroit * * * . (pp. 4413-4414).

(b) Mr. Hoffa invariably kept no personal checking account. Invariably he dealt in cash and in large sums in a manner which is distinctly not characteristic of honest men. He made it necessary, therefore, for everyone, including union members and officials, Internal Revenue Agents and Senate Committees, to take him on faith, (although he has given so many glaring demonstrations of his own personal faithlessness) or to disbelieve his word. Some men fail to keep bills and vouchers through carelessness. Hoffa carefully refrains from keeping them.

(c) For example:

> MR. KENNEDY: I am raising the question about this Teamster money ($4,900.) that was charged to organizational expenses * * * by you on your income tax return as your own personal money, money that belonged to the Teamsters * * *
>
> THE CHAIRMAN: The witness says the reason he did it was because he operates that way. He takes in receipts. He gets no invoices. Is that right?
>
> MR. HOFFA: That was the answer. (p. 4047).
>
> MR. KENNEDY: Mr. Hoffa, do you keep records or bills on your other union expenses, or do you declare them all as income?
>
> MR. HOFFA: If it is a hotel bill, hotel bills are turned in by the hotels, charged and turned in by the hotel and the Union pays them. If it is an out-of-pocket expense, I don't keep any bills. I sign a voucher and that is all there is to it. (p. 4051).

This colloquy concerned an alleged organizational expense item of almost $4,900. for which there was no better voucher than Mr. Hoffa's dubious word. Earlier, Mr. Hoffa testified as follows:

> SENATOR IVES: * * * But if this money had been spent as a Union expense, actually would it have been taxable?
>
> MR. HOFFA: If I had produced the bills for the money I spent out of this account, it would not have been taxable. You are correct in that.
>
> SENATOR IVES: Well, why did you not?
>
> MR. HOFFA: I am not in the habit of keeping bills, Senator, unfortunately. (p. 4042).

Unfortunately, indeed, for the Senate Select Committee and, especially, for the Union! The commonest fraud of crooked union leaders is to call expenditures "organizational expenses" without voucher or itemization.

(d) The whole McClellan Committee record bristles with instances of padded bills. (And they are only the ones which have been discovered.) Hoffa actually admitted on the stand that his friend "Barney" Baker, to his knowledge, frequently padded bills;

and that he had to talk to Baker about it, on several occasions. Nothing was ever done, however, to challenge Baker's padded bills. They were paid. The reason is obvious from the entire record.

(e) Mr. Hoffa's attitude toward the Union Treasury is far more evil than anything which even Williams and Bergen (without foundation) seek to attribute to me. It can be summarized by the following evidence of dictatorial attitude:

> MR. KENNEDY: * * * This check is dated June 19, 1956 - Truck Drivers' Local Union 299, and it is payable to the Florida National Bank for $300,000. Could you tell the committee the circumstances surrounding the issuance of that check?
>
> MR. HOFFA: The check speaks for itself. It is a deposit in the bank.
>
> MR. KENNEDY: Why were you depositing $300,000 in a bank.
>
> MR. HOFFA: Because I wanted to. (p. 4347).

(f) Here is a further example of Hoffa's arbitrary dictatorship, fiscal and other:

> MR. HOFFA: * * * I may say to you we haven't had any dissenting votes in the meeting.
>
> SENATOR IVES: Do they dare to dissent?
>
> MR. HOFFA: Senator, if you want to come to 299 meetings * * * .
>
> * * * *
>
> SENATOR IVES: * * * I am talking about the minority that does not approve the Candidates you are supporting.
>
> MR. HOFFA: So far there hasn't been a minority.
>
> SENATOR IVES: How many attend those meetings * * * ?
>
> MR. HOFFA: Anywhere from two hundred to one thousand, to fifteen hundred.
>
> SENATOR IVES: Out of how many members?
>
> MR. HOFFA: * * * out of a membership of about fifteen thousand * * * . (p. 4086).

(g) Out of union funds, Hoffa bought the home of a notorious hoodlum named Ricca (whose need for sale or cash at the time was conveniently served) for $150,000.:

> MR. CHAIRMAN: Mr. Hoffa, are we to understand * * * that you, as President, have authority to make an expenditure of $150,000. of Teamster money without anyone else approving or agreeing to it? I mean, the blanket authority to do that?

MR. HOFFA: The membership has so voted and so have the Executive Board, sir.

THE CHAIRMAN: Both the membership and the Executive Board have voted to give you blanket authority, unlimited, to spend any funds in any amount that you deem personally to be in the interest of the Union.

MR. HOFFA: That is correct, sir. (p. 4080).

(h) No honest man would want or claim the absolute power of the purse exercised by Hoffa and his Teamster intimates:

MR. HOFFA: * * * Harold Gibbons is authorized, and I am authorized by the Executive Board of the Central Conference of Teamsters to draw checks from the account of Central Conference of Teamsters as we deem necessary * * *

* * * *

THE CHAIRMAN: There wasn't any special resolution about it?

MR. HOFFA: It wasn't necessary.

THE CHAIRMAN: According to your contention and Mr. Gibbons' contention, no such resolution is necessary because you have the general authority to act as you see fit?

MR. HOFFA: Yes, sir. (pp. 4040-41).

(i) Only a Hoffa could brazen his way out of mislaying (?) $5,000. of Union funds:

MR. KENNEDY: But you did not know that you had five thousand dollars in the box?

MR. HOFFA: It isn't my business to know, and it is the secretary-treasurer's business to keep track of the money * * * (p. 4027).

(j) Hoffa finds it easy to lend $11,000. of Union funds to a friend to the tune of fraudulent bookkeeping.

THE CHAIRMAN: * * * Now, we have this transaction of $11,000. advanced from your union to the individual secretary of another union. What does it say?

MR. KENNEDY: * * * "cash on hand".

THE CHAIRMAN: * * * what does "cash on hand" mean?

MR. HOFFA: It means that the secretary-treasurer cashed the check and had the cash in the possession of 299 until such time as I directed him what to do with the cash, Senator.

THE CHAIRMAN: Did this money ever go to Connally?

MR. HOFFA: Jerry Connally, sir; yes, sir, it did. (pp. 4020-21).

THE CHAIRMAN: Well, it doesn't show anywhere during that time that Connally had the money, does it?

MR. HOFFA: That is correct, it does not.

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THE CHAIRMAN: * * * So one examining records would not know that your Union had advanced Connally $11,000.?

MR. HOFFA: You are right, sir, but by the same token the reason it was put in our cash on hand was to make us responsible to produce the money. (pp. 4021-22).

(k) As if he weren't responsible for it unless it were marked "cash on hand" - the very type of entry that permits most irresponsibility when supplemented by a system of never keeping bills or vouchers. The interrogation continues to reveal further aspects of Hoffa's financial irresponsibility:

THE CHAIRMAN: You show it as cash on hand, and carried it that way, when, in fact, it was not cash on hand; is it a loan?

MR. HOFFA: You are correct, sir, but the reason we put it there was so that we would be responsible for the $11,000. If Connally did not pay it back we would have to reimburse Local 299 for the $11,000.

THE CHAIRMAN: We? Who?

MR. HOFFA: Myself and Collins. I am the president, Collins is secretary-treasurer, and we signed the check and would be responsible under the Constitution for that money. (p. 4022).

MR. HOFFA: I would say that any check that Collins drafted would only be drawn if I told him to do so. (p. 4001).

(l) See also pp. 3992-4000 respecting a suspicious item of $5,000. expended irresponsibly and without adequate records, Hoffa weekly referring his interrogations to Owen Bert Brennan, who regularly takes the Fifth:

THE CHAIRMAN: * * * We find these transactions running circuitous routes to get money into somebody's hands and the books do not give the explanation.

MR. HOFFA: I recognize that. (p. 4000).

(m) A minor puzzle respecting a check for $3,000. expenses:

MR. KENNEDY: (referring to a $3,000 expense item) * * * your signature does appear on the check for three thousand dollars.

MR. HOFFA: I understand that.

MR. KENNEDY: To Samuel Feldman on August 15, 1955. Now could you tell us why that money was paid to Mr. Feldman?

MR. HOFFA: I cannot tell you why the money was paid. Gibbons has the authority as secretary-treasurer to fill in the necessary checks for expenditures * * * and I signed the checks in blank * * * (p. 3913).

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assert. What charges it fails to state. Whether the charges are true or false is apparently irrelevant. What is wrong about preparing charges does not appear. ✓The fact is that I did participate

23. Against the background of such cases as the foregoing (and there are others) Hoffa and his attorneys now falsely challenge my modest and proper expense account. Surely it cannot be because they are really concerned with padded bills constituting a drain on the Union treasury. In all circumstances which serve as context for this challenge against me, it can only be because of reprisal and because of their desire to hamper my effectiveness as a court officer by occupying my time and energies with irritating motions and untruthful accusations.

24. CHARGE #5. The fifth charge against me, as signed by Williams and Bergen, is in some respects so ambiguous and nebulous as to provide me with no meaningful indication of anything except an intention to smear. The first sentence of the fifth charge reads: "Since assuming his duties as monitor, Schmidt has continued to act as an advocate and partisan spokesman for various groups within the International in a manner wholly inconsistent with his obligations as a Court-appointed monitor." What preceisely this "manner" is, Williams and Bergen deliberately leave to speculation. What do I advocate improperly? Whose spokesman am I? Obviously, I am still an advocate, and to that extent a partisan, in my role as attorney for the plaintiff. Williams and Bergen cannot refer to this. That would condemn Mr. Wells, too. Besides, I have not been so blinded by partisanship in the conduct of that attorneyship as to forget or neglect my duties as an officer of the court. Which are the "various groups" to which Williams and Bergen thus mysteriously refer? My conduct has, doubtlessly, demonstrated that I am an advocate and partisan for the downtrodden and abused who are under the heel of the Hoffa dictatorship and corruption. For this I make no apology. It is my duty, both as a court officer and as a lawyer.

25. Perhaps, however, the first sentence of Charge #5 is to be construed as having been specified in the second and third sentences? Mr. Williams and Mr. Bergen will have to be more specific if an adequate answer to this question is to be forthcoming. The second sentence charges me with participating in the drafting of charges against officers of the union! Which officers it fails to

assert. What charges it fails to state. Whether the charges are true or false is apparently irrelevant. What is wrong about preparing charges does not appear. The fact is that I did participate in the preparation of 263 charges against James R. Hoffa. Also, I put into words charges which had been made by my clients, ineffectually to date, against John J. O'Rourke and John McNamara. I did these things because as an officer of the court, as a Monitor and as an attorney for plaintiffs, my duty dictated preparation of those charges. For months I had asserted them orally at Monitors' meetings, after my clients and their friends had filed written complaints. I see no justice in a system: that brings miscellaneous rank-and-file opponents of Mr. Hoffa's regime up on the flimsiest charges and submits them to stern penalties; and that permits Mr. Hoffa to commit with impunity the most heinous offenses for which he is reprobated by the AFL-CIO but never held effectively accountable by anyone else. I have long since come to the conclusion, as I set forth in my Supplemental Report, which is part of the printed Initial Report of the Monitors, that Mr. Hoffa and his provisional officers, and many of his friends, are so detrimental to the welfare of unionism in general and the Teamster membership in particular and to the prestige of the Teamster organization as a whole that they must be eliminated. I never made any secret of this. Hoffa's conduct and attitude are such as to convince me beyond a reasonable doubt that it is impossible to expect any real reform and any substantial recapture of good name for the Union while Hoffa and those in concert with him control the destinies of the Union. They are, after all, usurpers, who rigged an election. They habitually do what you must expect from usurpers. They are, according to the available evidence, and even according to their own sworn admissions, some of the most dastardly and dangerous misleaders of labor in the country, men who are a disgrace to organized labor and civilization. What is more they are a challenge to good government (expecially our Courts, for otherwise a wretched membership is remedyless) and a threat to the civil liberties of 1,600,000 members. I notified my fellow Monitors that I had reached the conclusion that Hoffa and his associates ought to be ousted for sake of justice and for the good of the organization and for the welfare of trade unionism, in general. I informed my associates that I was preparing a summary or a resume of Hoffa's misdeeds, and, that I would eventually make a motion that the Monitors recommend his ouster. I prepared that summary before I drafted the charges. This I considered to be my duty both as a Monitor and as lawyer for plaintiffs.

26. Yet I want to emphasize that it is false to say, as do Williams and Bergen, that I prepared charges against anyone knowing that it would be one of my duties as a Monitor to pass ultimately on the merits of the case. I have constantly told my fellow Monitors that I did not feel that the Monitors should be called upon to try Hoffa or anyone else. I felt that this should be done by the Court itself, or by some impartial panel chosen by the Court or by the Monitors. It is, therefore, misrepresentation to say that I placed myself in the position of acting as prosecutor and judge. Williams and Bergen again very carefully refrained from giving sworn particulars. They seem more interested in guilt by unsworn charge and by conclusory statement than in giving factual evidence. They can have no evidence for such unwarranted and unfounded statements. (Of course, it never occurred to them to object when Mr. Hoffa, himself, was prosecutor and judge in such cases as that of William Mills of Canada.) Thus, Williams and Bergen continue to act as advocates and partisan spokesmen for the Hoffa group (even when they are under serious and substantiated charges) within the International Organization, despite the fact that they pretend to serve as counsel for the International Organization and its many victimized members.

27. CHARGE #6. The sixth charge upon which Williams and Bergen rely for my removal is false as a fact and legally absurd as a ground for my removal. Once again only speculation can piece out the deficiencies of the words used as vehicles for conveying Williams' and Bergen's meaning. What have I improperly told to the newspaper men? Throughout my Monitorship, I have honored requests of the Chairmen with respect to publicity. I have never broken my word with respect to publicity. I never made a promise that I would

not speak to the reporters. Surely I am not to be blamed if, on occasion, I (along with many others) am misquoted. During one very brief period the present chairman, Mr. O'Donoghue, asked me not to talk for publication. I deferred to him. A few days afterwards, however, he telephoned me and told me he saw no reason why he should attempt to censor me in that respect. He told me to disregard the request he had originally made. Charge #6 is a piece of typical "liberal" hypocrisy which seeks to muzzle and supress the truth which counters Hoffa's interests in the name of a pious jurisprudence. Also, it is characteristic of Teamster intra-union "jurisprudence" and "due process" under the Hoffa dictatorship that unspecified and unsworn charges like these are made at all. I am charged with causing the publication of stories designed to embarrass the International! What is the evidence for this? What stories? All this is prudently undisclosed. At times the truth hurts. It especially hurts the guilty. However, that is one of the casualties of free speech. It will be observed that Charge #6 does not allege that the stories to which I gave publicity are untrue. It falsely attributes to me a motive to embarrass the International. My motive is better known to me than to Williams and Bergen. It was and is to tell the truth which needs to be told; so that hundreds of thousands of teamsters can learn something of what is going on, despite the propaganda and "hand-outs" prepared for them in their own magazine by Hoffa and his paid writers, of whom Hoffa himself said: "Senator, I learned a long time ago that I can hire writers to write anything I want * * *." (p. 4441). Hoffa wants free speech and free press for himself, but not for others.

28. In one respect, the charges against me make a damaging admission against Hoffa. It has long been my contention (e.g., in my Supplemental Report which is part of the Initial Report of the Monitors) that the provisional officers, from the beginning, have failed to cooperate with the Monitors. In charging me with a purpose to stimulate dissension and disorder "thereby undermining the cooperation of the Monitors and the officials of the International Brotherhood", Mr. Williams and Mr. Bergen apparently admit that there has in fact, been a lack of such cooperation. Of course, they

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prevaricate when they attribute to me a motive to foment such lack of cooperation. But the truth has slipped through the chinks of their carefully contrived advocacy and partisanship when they imply that such cooperation is wanting.

29. By what right do they stand in judgment of my motives? Under what theory of law will their dogmatism as to my motives serve as a legal reason for my removal as a receiver? I appreciate that true stories about Hoffa inevitably have a built-in design to embarrass the International Brotherhood of Teamsters. That Brotherhood has been embarrassed with Hoffa and his choice associates for many months now. But I cannot understand why it should be suggested by Hoffa's attorneys that I, as a Monitor and as attorney for plaintiffs, have a lesser right to bring truthful stories to the press, than Mr. Hoffa, Mr. Williams and those in concert with them have to bring their frequently false stories (e.g., their "reasons" for my disqualification) to the press. Mr. Hoffa's organization under his direction and with his sanction published in the International Teamster Magazine manifestly false stories about Joint Council 13 and Local 107. They disseminated to the press misleading information respecting the phoney whitewash "commission" designed to evade the Monitorship, a "commission" picked by Hoffa to investigate Hoffa's misdeeds! Hoffa lied under oath by saying that the Monitors stole his thunder. (p. 3984 ff.).

30. CHARGE #7. The seventh charge against me is more bizarre and laughable than the previous one. Under some wierd principle of law, professional ethics or morality, it is assumed that there is something nefarious and reprehensible about making reports (what reports?) and turning over information (what information?) to the Senate Select Committee on Improper Activities in the Labor and Management Field. Perhaps it is this "principle" which prompted about 170 Teamster officials to refuse under the Fifth Amendment answers to more than 3000 questions concerning their dubious union stewardship.

31. The pattern of this strange motion for my removal prevents the two movants from specifying just what reports and what information I am supposed to have turned over to the Senate Select

Committee. It is generally alleged, however, that they are "matters directly within the jurisdiction of this court". There are, of course, many matters which are within the jurisdiction of this Court which are also constitutionally within the jurisdiction of a Senate Investigating Committee. No necessary or improper conflict can be derived from the fact I turned over information to the Senate Select Committee. I am sure neither Williams nor Hoffa have the foggiest notion of the information involved. They are just fishing".

32./ On several occasions I have turned over information to the Senate Select Committee. However, it is more uniformly true that the Senate Select Committee has made available to me, on my visits to it, information in the form of its printed reports or in the form of its stenographic minutes. It is certainly not true (and Messrs. Williams and Bergen have presented no better "evidence" than their own groundless speculation and assertion) that I have handed over any information "for the purpose of embarrassing and harrassing the International" or for the purpose of creating dissension and disorder, or for the purpose of undermining cooperation necessary for the successful affectuation of the Consent Order.

33. The successful effectuation of the purposes of the Consent Order has long since been put beyond the realm of doubt and speculation. The defendants and their counsel have made so many moves, often covert and collusive, and taken so many actions and have defended so many pieces of misconduct by Hoffa and his friends as for all practical purposes to insure that the Consent Order will not and cannot be accomplished. That is why the preliminary injunction of October 23, 1957, ought to be reinstated and a real receivership inaugurated.

34. If one of the necessary effects of certain truthful information is the embarrassment of Mr. Hoffa and of his corrupt associates, or even their harrassment, that is more their doing than mine. For such incidental results, I make no apology. It is about time they were embarrassed - although I think they are beyond shame. The man who has done more to create dissension and disorder within the Teamster Organization and to undermine the cooperation

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necessary for the success of the Consent Order is Mr. Hoffa himself; and he is sturdily aided by his co-conspirators; and at times by his counsel.

35. In any cases, I regard it as my duty to supply the Senate Select Committee with information which needs investigation and development; especially since Mr. Hoffa and his counsel use detectives paid out of the Teamster treasury and the whole Teamster Organization as an investigative unit, supplied free of charge to Hoffa and his counsel, for the defense or the exoneration and exculpation of Mr. Hoffa and those in concert with him regardless of the real interests of the Teamster members. Neither the Monitors nor the plaintiffs I represent have the funds nor the facilities for investigation which are at the disposal of Mr. Hoffa, his associates and his counsel. Therefore, in order to develop the truth by fuller investigation, it has become necessary for me from time to time to submit leads to the McClellan Committee. Under no theory of professional ethics, morality or law is this improper. Indeed I regard it as a duty. Mr. O'Donoghue, as Chairman, gives information to the McClellan Committee; and has received some in return.

36. CHARGE #8. Perhaps the most farcial of all of the arguments pressed into service for my removal is the eighth: that I have made public statements on right to work laws and on picketing which are "adverse, inconsistent and incompatible with the position taken by all organized labor". When I became a Monitor and an officer of this court, I did not also become a second rate citizen with lesser rights of free speech and opinion than their clients. It would never occur to me to criticize the right of any man to state publicly his position with respect to such debated subjects as the right to work laws and peaceful picketing for unlawful purposes. Certainly I make no apologies for whatever I have said publicly on these subjects. I can defend my opinions with sound arguments of which I am unashamed.

37. Hoffa, himself, and the manner in which he has conducted the Teamster Union is one of the best arguments for right-to-work laws; and also for further legislation regulating peaceful picketing for unlawful or improper purposes. Messrs. Williams and Bergen

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suggest that my views on these subjects have been so widely disseminated as to destroy the confidence of the members of the International Brotherhood of Teamsters in my motivation! For their own purposes Messrs. Williams and Bergen have conferred upon my relatively unknown views on these subjects an influence and a promulgation wider than they have ever enjoyed. What possible type of evidence can Williams and Bergen adduce to support their dogmatism in this respect? Have they enlisted the services of the Gallop Poll in order to identify the "position of all organized labor" or to test the confidence of the one million six hundred thousand members of the Teamster Organization? Are professional union officers the same as "all organized labor"? In any case, since Mr. Williams has admitted before the McClellan Committee that he is not an expert in industrial relations, his speculation about the attitude of "all organized labor" or of the members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America toward me is scarcely worthwhile evidence of anything except his uninformed personal opinion.

SUMMARY REFUTATION OF THE EIGHT WILLIAMS-BERGEN CHARGES

38. In Summary, the eight charges urged as reasons for my removal (in an unsworn document which consistently fails to be specific) are on their face insufficient and should be dismissed without the waste of time for a trial, because they are demurrable. At the very least the defendants ought to produce sworn testimony respecting the details they have in mind, so that I can better know what issues to answer. In the first charge no conflict is shown; it is merely asserted. Collective bargaining is outside of the scope of the Consent Order and of the Monitorship. Far from implying conflict of interest a collective bargaining agreement implies concourse of interest. Insofar as the charge implies that I have attempted to bargain collectively with the International Organization it is false. (I would have to be insane to try it.) ✓ I have bargained for long-standing clients with Local 816. Larry Smith of my office bargained with another Local. There was

no "conflict of interest". The second charge is based upon gross error or misrepresentation. I repeat that I did not solicit or collect money from any employers or employer groups. This charge has already been settled by res adjudicata in this case, in connection with the Cunningham application to oust me. Even on the false assumption that I did solicit and collect money from employers and employers' groups, Williams and Bergen do not show any "conflict of interest". They merely assert and assume it. 29 U.S.C. 186 is clearly not applicable here. The third charge is based upon the false allegation that I made a claim for $61,128.35. This Court must take judicial notice of the documents and proceedings herein in connection with my expenses. My request was for $9,795.53 in expenses. At no time did I ever file a claim for anything in excess of that amount. The fourth charge asserts but does not specify or identify the items of monitorial expense for which I made request and which are conceived to be improper. A majority of the Board of Monitors agrees that the expense items which I filed in writing are proper. The incompatibility to which Messrs. Williams and Bergen referred is merely alleged and not specified. It is non-existent. Monitorial expenses are primarily matters for the Board of Monitors to make decisions on. The fifth charge is on its face insufficient. It is false in one material fact, namely that I intended to be both judge and jury. It is my duty as a monitor and as plaintiffs' attorney to prefer charges against officers when they are true. If I failed to do so I would be aiding Hoffa's policy of double standard of guilt as between officers and members, and would really be subject to criticism. ✓This charge fails to assert that the 263 charges against Hoffa which I have prepared, and of which, apparently, Williams and Bergen complain, are true or false. The fact is, the charges are based on overwhelming evidence. The sixth charge is insufficient on its face because my motives in telling truthful stories to the newspapers are not relevant to this proceeding. Williams and Bergen do not deny the truth of the stories in question. Indeed, they do not even identify the stories. This charge also attributes to me motives which are false. I am a better judge of my own motivation than Mr. Hoffa and his attorneys. At no time have I breached any promises with respect to publicity. Williams and Bergen do not even specify the promises which I am supposed to have breached. With regard to publicity my conduct is no different from that of the other Monitors. The seventh charge is on its face insufficient. It is my duty as a court officer, as a lawyer and as a citizen to give truthful information to authorized investigative agencies. The Senate Select Committee is an authorized investigative agency. The fact that I have given it information which is truthful increases rather than decreases my qualification as a Monitor. The Monitors do not have the means for investigation which are available to the Senate Select Committee. Williams and Bergen do not identify the information which I gave to the McClellan Committee. It is quite possible that what they have in mind, I have never done. In any cases, neither this Court nor I have any way of actually denying what Williams and Bergen intend to affirm because of the vagueness with which they here make irresponsible affirmation. Certain it is that they attribute to me motives which I disown. Finally, the eighth charge is on its face insufficient, because my views on the right-to-work laws and on peaceful picketing are (because of the Bill of Rights, the United States Constitution and the Fourteenth Amendment) my right and privilege without supervision from Williams, Bergen, Hoffa or anyone. I have not been deprived of my constitutional rights to opinions on disputable subjects because I have become a Monitor.

Sworn to before me this
20th day of October, 1958.
Lawrence T Smith

GODFREY P. SCHMIDT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(Civil Division)

JOHN CUNNINGHAM, ET AL.,)
Plaintiffs)
v.) Civil Action No. 2361-57
JOHN F. ENGLISH, ET AL.,)
Defendants)

CITY, COUNTY AND STATE OF NEW YORK:

GODFREY P. SCHMIDT, being duly sworn, says:

1. I am one of the Monitors appointed by Judge Letts under the Consent Order duly filed herein on January 31, 1958.

2. The following is an itemized statement of expenses to which I was put in the discharge of my function as Monitor for the period from January 31st, 1958, until and including March 5th, 1958; except that the telephone charges listed below run from January 31st to February 24th, 1958:

PAID IN 2 INSTALLMENTS - DUE TO DISPUTED ITEMS WHICH WERE PAID ONLY AFTER LONG DELAY

See Letter Attached.

x	B.N.A.	$ 388.00
x	Thermo-fax expenses	367.14
	Royal York Hotel	92.51
	Taxis	51.95
	Carlyle Hotel	22.88
	American Airlines	33.40
	Northeast Airlines	167.81
	American Airlines	33.40
	Eastern Airlines	24.42
	American Airlines	90.42
	Eastern Airlines	48.89
	Continental Hotel	18.36
x	Stenographer	200.00
	Per diem Washington	100.00
	Per diem Miami	50.00
	Telephone 1/31/58-2/24/58 (including toll calls from both home and office)	266.14
		$ 1,955.27

3. The foregoing itemization is self-explanatory, except that:

(a) The B.N.A. item represents the Bureau of

Exhibit A

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National Affairs Labor Relations Reporter, which I bought in order to provide me with up-to-date information of the labor field as a facility for my functioning as a Monitor.

(b) The Thermo-fax reproducing machine was purchased for the purpose of avoiding the necessity of retyping or photostating the hundreds of pages of correspondence, etc., which I must have copied and sent to my colleagues and to others.

(c) During the last trip to Washington, I had to return Tuesday (March 4, 1958) night to Westchester County for the purpose of giving a lecture at Manhattanville College; and I had to return to the Monitors' meeting the next day Wednesday morning. This made one additional round-trip by airplane necessary.

(d) In my conversations with Mr. Nat Wells and Mr. Ed Williams respecting the preparation of this statement, it was agreed that incidental expenses would be covered by a per diem of $25.00 per day; and the per diem items indicated above pertain to a 4-day stay at Washington and a 2-day stay at Miami Beach.

(e) Both the Thermo-fax and the B.N.A. reports will be turned over to the International Organization upon termination of my services as Monitor.

4. I have kept in my files the vouchers and receipts for the airplane and hotel bills as well as the Bureau of National Affairs and the Thermo-fax; and I shall be happy to present them if requested.

5. Annexed hereto is an affidavit of Mrs. Ruth Ford respecting the stenographer's expenses of $200.00.

Sworn to before me this
10th day of March, 1958

____

Memorandum to Godfrey Schmidt
Re: Monitors' Expenses
March 27, 1958

In accordance with your request, I am asking the Secretary-Treasurer of the I.B.T. to issue to you a check today to cover your expenses claimed for the period from Janaury 21, 1958 through March 5, 1958 for such items as are not in dispute. So that you will know what items are in dispute, I have listed them below.

B.N.A.	$388.00
Thermo-fax machine	367.14
Stenographer	200.00

We are not deducting the claims for hotel expenses even though we are reimbursing you also on a per diem basis for time spent out of town since this was the result of a minunderstanding on your part of our informal agreement.

I will be glad to sit down with you and discuss the disputed matters at any time convenient to you.

Edward Bennett Williams

955.14 (The above amount)

Paid at a later date.

1,000.13 paid on March 28, 1958

HOTEL, TRAVEL AND MISCELLANEOUS EXPENSES INCURRED BY GODFREY P. SCHMIDT IN CONNECTION WITH WORK AS MONITOR
MARCH 1, 1958 - May 31, 1958

In Washington @ $25.00 per diem:

March 3 - March 5
March 25 - March 28
April 14 - April 17
April 30 - May 1
May 13 - May 14
May 20 - May 21
May 27

$ 450.00

Telephone and Telegraph expenses incurred as Monitor:

March:	(office)	123.93
	(home)	141.30
April:	(office)	106.37
	(home)	169.13
May:	(office)	113.83
	(home)	107.83

762.39

Travel expenses:

Airplane tickets	237.19

Stenographic Service:

March 17	Crown Personal Service	$294.48
March 20	Ruth Ford - overtime	75.00
April 12	Stenographic Service Co.	22.50
April 14	General Office Service	20.63
April 27	Manpower, Inc.	21.60
May 3	Office Temporaries	17.50
May 4	Manpower, Inc.	56.70
May 27	Stenographic Service Co.	112.79

621.20

Postage, Stationery and Miscellaneous:

March 5	Thermo-Fax paper	27.69	
April 3	Thermo-Fax paper	57.06	
May 29	Thermo-Fax paper	118.19	
April 11	pads and paper	9.58	
April 11	stationery and envelopes	21.17	
May 15	gummed envelopes	9.53	
May 17	postage	17.00	260.22

TOTAL. $2331.00

PAID IN FULL ON
JUNE 27, 1958

AFFIDAVIT IN SUPPORT OF SOME OF THE ITEMS OF EXPENSE SET FORTH IN THE BILL COVERING THE PERIOD MARCH 1ST TO MAY 31, 1958

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

Godfrey P. Schmidt, being duly sworn, says:

1. I am an attorney duly admitted to the practice of law to all of the courts of the State of New York and of the District of Columbia; and I am the Monitor nominated by the plaintiffs and appointed by the Court herein to serve on the Board of Monitors for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, created pursuant to Section 2 of the Consent Order dated January 31, 1958.

2. I make this affidavit pursuant to Section 10 of the Consent Order for the purpose of certifying the actual amount of monies spent by me as expenses properly incurred as a Monitor from the period March 1st to May 31st, 1958.

3. Annexed hereto marked Exhibit A to form part of this affidavit is a set of photostatic copies of bills or checks for expenses incurred during that period.

4. In addition to these photostatic copies I affirm under oath that I actually spent the following amounts of money in connection with the business and affairs of the Monitorship; and that I deem such expenses necessary for the proper discharge of my oath of office as a Monitor and of my responsibilities as a Monitor under the Consent Order.

(a) In the month of March 1958 I spent a total of $123.93 for telephone and telegraph expenses incurred as a Monitor at my office, and the sum of $141.30 for telephone and telegraph expenses incurred at my home as a Monitor.

In the month of April 1958 I spent a total of $106.37 for telephone and telegraph expenses incurred as a Monitor at my office, and the sum of $169.13 for telephone and telegraph expenses incurred at my home as a Monitor.

In the month of May 1958 I spent a total of $113.83 for telephone and telegraph expenses incurred as a Monitor at my office, and the sum of $107.83 for telephone and telegraph expenses incurred at my home as a Monitor.

(b) For the seven trips to Washington, D.C. for which I did not keep records, I charged the International Brotherhood of Teamsters the sum of $33.97 (this includes excess baggage charge) per trip, or a total of $237.19.

(c) For clerical and technical help required during this period and in addition to those bills for which photostats are attached, I also spent the sum of $294.48 paid to Crown Personal Service, and the sum of $22.50 to Stenographic Service Co., and the sum of $75.00 as overtime paid to Ruth Ford, secretary, for services in connection with my duties as a Monitor.

. . . .

Sworn to before me this
day of August, 1958.

. . . .

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HOTEL, TRAVEL AND MISCELLANEOUS EXPENSES INCURRED BY GODFREY P. SCHMIDT IN CONNECTION WITH WORK AS MONITOR
JUNE 1, 1958 - June 30, 1958

In Washington @ $25.00 per diem:		
June 9 - June 13 June 22 - June 25		$ 225.00
Telephone and Telegraph expenses incurred as Monitor:		
office	$113.21	
Home	$117.87	231.08
Travel expenses:		
4 round trip fares to Washington @ $56.94		227.76
Stenographic Services:		
Shirley Blaine	$130.00	
Margaret Mathews	$100.00	230.00
Expense incurred by me as Monitor in compiling affidavit to refute false charges of John Cunningham		848.20
TOTAL		$ 1,762.04

$913.84	Paid on Aug. 15, 1958
$848.20	Not paid as of Oct. 20, 1958 - Disputed item because "EBW" does not agree

HOTEL, TRAVEL AND MISCELLANEOUS EXPENSES INCURRED BY GODFREY P. SCHMIDT IN CONNECTION WITH WORK AS A MONITOR
JULY 1, 1958 - July 31, 1958

In Washington @ $25.00 per diem:

July 1, - July 2		
July 14		
July 20 - July 23		$ 175.00

Telephone and telegraph expenses incurred as Monitor:

Home	$ 248.01	
Office	134.81	
Washington, D.C. Hotels	79.18	$ 462.00

Travel Expenses:

5 round trip airplane fares @ $33.44	$ 167.20	
(includes tickets paid for Bartley C. Crum and Patrick Kennedy on July 14, 1958 for purpose of interview with Judge Letts - arranged by Mr. Williams)		
Extra taxi fares in N.Y. - to and from Airport	40.50	
Lunch in Washington, D.C. for Mr. Crum and Mr. Kennedy	10.55	
		218.25

Stenographic Services:

Margaret Regetz @ $95.00 per week		475.00

Postage, stationary & Miscellaneous:

Smith-Corona typewriter	$347.11	
Cost of photostating expenses	5.66	
Stationary bills for Monitor work	37.30	
Postage	22.00	
		412.07

TOTAL . . . .$ 1,742.32

NOT PAID AS OF OCTOBER 20, 1958

NO AUGUST OR SEPTEMBER BILL SENT.

OCT 31 1958

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

JOHN CUNNINGHAM, ET AL, Plaintiffs	)	
v.	)	Civil Action No. 2361-57
JOHN F. ENGLISH, ET AL, Defendants	)	

SECOND AMENDMENT TO PETITION FOR CONSTRUCTION, REFORMATION AND/OR MODIFICATION OF THE CONSENT ORDER

The Board of Monitors respectfully requests that its Petition for Construction, Reformation, and/or Modification of the Consent Order be amended as follows:

1. Insert the following declaration as Paragraph 1, G:

   Paragraph 4 of the Consent Order provides that the General Executive Board of the Defendant International Brotherhood "shall recommend for adoption by the local unions" a model code of By-laws or model provisions for inclusion therein which are to be drafted by the Board of Monitors. Further, Article VI, Section 4 of the Defendant Brotherhood's Constitution, a copy of which is attached as Exhibit 23, provides that the By-laws of Local Unions "shall be subject to the approval of the General President," and that if he fails to approve such By-laws, the matter may be referred to the General Executive Board for determination. See also Article XXI, Section 1 of the International Constitution.

2. Insert the following prayer as Paragraph 2, J:

   Interpret or construe Paragraph 4 of the Consent Order and instruct the Board of Monitors whether the provisions of Paragraph 4, when considered in the light of the provisions of Article VI, Section 4 and Article

~~XXI, Section 1 of the~~ Constitution, ~~(a) require~~ the Defendant International to recommend to its Local Unions all reasonable provisions, including election rules, which are proposed by the Monitors for inclusion in Local By-laws and (b) require Local Unions to adopt such provisions.

3. Insert the following declaration as Paragraph 1, H:

One of the problems with which the Monitors are most frequently confronted and which is most significant with respect to promoting union democracy is the determination of whether Teamster members whose dues are being checked-off by employers are eligible to run for office. (See, for example, the Board's Order of Recommendation No. 23, a copy of which is attached as Exhibit 24, and the protest from the decision of General President Hoffa by Local Union No. 100, a copy of which is attached as Exhibit 25.)

To be eligible for election to any office a Teamster member must be in continuous good standing for a period of two years prior to nomination. See Article II, Section 4 of the International Consitution. The problem of determining the eligibility of members on check off results in part from the fact that the present International officers under their interpretation of Article X, Section 5(c) of the 1952 Constitution would rule members to be in bad standing if their employers failed to forward to the Local Unions the employees' checked-off dues on or before the first business day of each month. This interpretation has been adopted despite the agreement of the Board of Monitors with the interpretation of the International Union's General Counsel that under the 1952 Constitution a member on check-off should be "considered eligible if his dues were properly checked off . . . even though received late by the local union" on the theory that the employer should be considered "the

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agent of the union and not that of the employee" (see letter of General Counsel to former Chairman Cayton, dated April 30, 1958, a copy of which is attached as Exhibit 26). Moreover, in 1949 and 1953 former General Presidents approved Local Union By-laws which conflict with the interpretation of the present officers.

The problem is further complicated by the fact that the 1957 Convention amended Article X, Section 5(c) to provide that a member on check off must make a payment of one month's dues in advance to insure his good standing. Under the Consent Order the 1957 Constitution became effective on January 31, 1958, but it appears that the constitutional provision requiring the payment of one month's dues in advance by members on check-off has never been properly promulgated. Such notice, as was given, announced that the provision was "now in effect" (see p. 4, March issue of The International Teamster, a copy of which is attached as Exhibit 27), and hence it was practically, if not absolutely, impossible for the members to comply with the new provision.

Finally, the present International officers have adopted the unreasonably restrictive interpretation of the 1957 Constitution that the payment of one month's dues in advance does not protect any employee if his employer is delinquent in payments to the Local Union for more than one month.

The restrictive interpretations of the present International officers will render the vast majority of union members ineligible to run for office. For example, in one case only approximately fifty-five of the three thousand members of the Local were eligible. It seems clear that the motivation in enacting restrictive eligibility requirements and the effect of restrictive interpretations of such requirements is the perpetuation of incumbents in office.

4. Insert the following prayer as Paragraph 2, K:

Instruct the Board of Monitors as to (a) the proper interpretation of Article X, Section 5(c) of the 1952 Constitution; (b) the proper interpretation of the 1957 amendment thereto; and (c) whether the 1957 amendment has been properly promulgated.

Respectfully submitted,

/s/ Martin F. O'Donoghue
Martin F. O'Donoghue, Chairman
Board of Monitors

Personal service of this Amendment on the Plaintiffs this ______ day of October, 1958, is hereby acknowledged.

Attorney for Plaintiffs

Personal service of this Amendment on the Defendant International Brotherhood this _____ day of October, 1958, is hereby acknowledged.

Attorney for Defendant
International Brotherhood

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

JOHN CUNNINGHAM, ET AL,
Plaintiffs

v.

JOHN F. ENGLISH, ET AL,
Defendants

Civil Action No. 2361-57

BOARD OF MONITORS' MEMORANDUM OF LAW ON MERGER OF LABOR UNIONS

A. General Principles of Merger

The basic principles regarding the amalgamation of labor unions are set forth in Dangel and Shriber, The Law of Labor Unions, Sec. 236, pp. 258-259:

> "The amalgamation of one labor union with another union amounts essentially to a dissolution of the former union. Although members of one union may unite with other unions, unless the laws of a union permit amalgamation with other unions, such amalgamation is legally ineffective where property rights are involved. A transfer of the members and property of a local union to another union to the extinguishment of the former cannot be effected by a vote of the majority members if certain of the members seek to maintain its existence and the property is held under the Constitution for the use of the union and its members."

Amalgamation was equated with disbandment or dissolution in Rosenthal v. Reinfeld, 48 Misc. 652, 96 N.Y.S. 199,200 (N.Y. Sup. Ct., Appellate Term 1905), where the Court had to consider the following constitutional provision:

> "This union shall not be disbanded as long as ten members have voted to continue its existence."

The Court concluded that in view of the above provision, "the refusal of evidence of the number of members who voted against consolidation, and so against practical disbandment, was reversible error, inadvertent of the chartered rights of the minority (96 N.Y.S. at 200)."

In Barbrick v. Huddell, 245 Mass. 428, 139 N.E. 629 (1923), the court held that in the absence of a constitutional

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provision, an International Union had no authority to amalgamate one union with another by revoking its charter. Other cases holding that an International Union may not consolidate local unions except in accord with constitutional provisions are *Reichert* v. *Brotherhood of Carpenters*, 14 N.J. Misc. 106, 183 A. 728 (1936); *Cameron* v. *Durkin*, 321 Mass. 590, 74 N.E. 2d 671 (1947). See also *Riverside Lodge No. 164* v. *Amalgamated Association of Iron, Steel and Tin Workers of North America*, 13 F. Supp. 873 (D.C. Pa. 1935) (unauthorized expulsion); *Seslar* v. *Union Local 901*, 87 F. Supp. 447 (D.C. Ind. 1949) (unauthorized transfer of property).

Cases to the effect that the majority members of a local union cannot, against a dissenting minority, dissolve, disaffiliate, or transfer a local's funds except in accordance with the constitution are *Low* v. *Harris*, 90 F. 2d 783 (7th Cir. 1937); *Local No. 2618* v. *Taylor*, 197 Wash. 515, 85 p. 2d 1116 (1938); *Liggett* v. *Koivunen*, 227 Minn. 114, 34 N.W. 2d 345 (1948).

Neither the Teamsters 1952 International Constitution (Defendants' Exhibit No. 56), which was in effect at the time of the purported merger of Locals 183 and 959 in Alaska, nor the Teamsters 1957 International Constitution (Defendants' Exhibit No. 57), now in effect, contains any provision whatsoever relating to the consolidation or merger of local unions.

Article XIX of both 1952 and 1957 Constitutions provides: "No local union can dissolve, secede or disaffiliate while there are seven (7) dissenting members." The official minutes of the December 12, 1957 meeting of Local 183 of Fairbanks, Alaska (Monitors' Exhibit No. 65) indicates that twelve members voted against the consolidation of Local 183 and Local 959.

By Order of Recommendation No. 21, dated September 2, 1958 (Monitors' Exhibit No. 64), the Board of Monitors requested International General President James R. Hoffa to provide by October 10, 1958 a legal memorandum setting forth the authority under the International Constitution for ordering or upholding mergers as distinguished from dissolutions, and setting forth the criteria by which the merger of two locals is distinguished from the dissolution of one local coupled with the transfer of its members to another local. No memorandum was forthcoming.

In order for two unions to be considered as having undergone a genuine consolidation, functioning as a continuation of the two constituents and thus not impairing the collective bargaining certifications of the constituents, the courts and the National Labor Relations Board have set forth certain conditions which must be fulfilled. The consolidated unions must be of comparable size and must have an equal voice in deliberations; there must be an approximately equal division of offices between the unions; and the consolidation must reflect a truly democratic expression of the views of the membership. National Carbon Co., 116 NLRB 488 (1956), enforced in Union Carbide and Carbon Corp. v. NLRB, 224 F. 2d 672 (6th Cir. 1957); Butler Chemical Co., 116 NLRB No. 87, 38 LRRM 1394 (1956). On the other hand, certification could not be continued in a merged union where the certified unit constituted only a fraction of the merged group and had no control over it. Dickey v. NLRB, 217 F. 2d 652 (6th Cir. 1954).

B. Notice of Proposed Merger

A vote taken on such an important issue as dissolution or merger is void, where the members have not been sufficiently apprised beforehand that anything so far outside the ordinary business of the union is to be presented at the meeting. This is particularly true where the meeting as in the present case on December 12, 1957, is a special and not a regular meeting. See Bacon v. Paradise, 318 Mass. 649, 63 N.E. 2d 571 (1945); Overton-Bey v. Jacobs, 131 N.Y.S. 2d 31 (Kings Co. 1954); Bridgeport Brass Workers Union Local 320 v. Smith, 136 Conn. 654, 74 A. 2d 191 (1950); Marvin v. Manash, 153 p. 2d 251 (Ore. 1944); Hacker v. McKissock, 76 A. 2d 89 (N.J. Super. 1950), affd. 7 N.J. 323, 81 A. 2d 480 (1951); Baker v. Hazel Park Harness Raceway, 34 LRRM 2080 (Mich. Cir. Ct., Wayne Co., 1954); Annotation, 167 A.L.R. 1233.

The notice given must be such that it can reasonably be concluded that in the ordinary course of events the membership generally, if not entirely, would have the opportunity of acquiring knowledge that the meeting was to be held and of the business to be transacted. Textile Workers Union v. Peraro, 32 LRRM 2621 (Conn. Super. Ct. 1953); see Baker v. Hazel Park Harness Raceway, supra.

The notice of the meeting must give its object where the meeting is to deal with so important a matter as dissolution or absorption, and it is not sufficient to state that the meeting is "Very Important." Bacon v. Paradise. See also Overton-Bey v. Jacobs, supra ("Officers will deliver a report and recommendation with respect to the future position of the Local as a result of the expulsion of the ILA from the AFL"--insufficient notice of vote on dissolution and change of affiliation).

The sufficiency of notice is a question of fact for the trier. Textile Workers Union v. Peraro, supra.

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Notice must be timely as well as specific. In *Textile Workers Union* v. *Peraro*, *supra*, the agenda for the *regular* meeting on the night of May 13 was posted on May 8. Between 9 and 10 a.m. on May 12, the day before the meeting, there was added to the agenda: "Also question of shall we continue to affiliate with T.W.U.A.-C.I.O?" The supplemental agenda was posted on the bulletin boards and passed along the line in the factory where the local's members were employed. The Court noted that at the time 2068 employees were working, and 251 were laid off. Fifty-one employees were absent from work on both May 12 and 13. Ordinarily 70-100 members attended union meetings; on May 13, 700-750 members attended and voted *unanimously* for disaffiliation. Despite the concentration of the union membership in one plant, the Court held that the disaffiliation action was invalid for lack of timely notice.

C. Fair Presentation of Merger Issue

For a genuine voluntary consolidation of local unions, there must be a truly democratic expression of the views of the members of the affected locals. See *National Carbon Co.*, *supra*; *Butler Chemical Co.*, *supra*.

In order to secure a truly democratic expression of the views of the members, there must be a fair presentation of the issue upon which the members are to vote. The official minutes of the December 12, 1957 meeting of Local 183 of Fairbanks, Alaska (Monitors' Exhibit No. 65) reflect that the question of merger was never presented as a single, clear-cut issue. The approval of the merger was treated as part of, or as a prerequisite to, the request for the granting of autonomy, and the two questions were presented for a single vote. This is made clear by the following excerpts from the minutes:

"Bro. Carr . . . explains further that after the meeting of Local 959 Anchorage, he had written a letter to Pres. Beck asking for the consolidation of both locals. If the membership of Local 183 votes to consolidate tonight, Pres. Beck will proubly (sic) order the election and merger at a later date, if he denies the merger then the election will have to take place in each local seperatley (sic), actually what we are doing, is electing officers and merging with the hope that autonomy will be granted. Bro Carr asked if there was any further questions on this matter?

* * *

"Bro. Bob Talbot made the motion which was seconded by Bro. Poorman, as Follows: I move that Local #183 Fairbanks, and Local #959 Anchorage be consolidated into one Local to be known as Local #959 for the best intrest (sic) of all members concerned and that we be given immediate autonomy.

"A discussion followed pro and con.

"A vote was called for 114 in favor 12 against (5 not voting as the 5 new members did not understand what it was about)."

IN THE UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN CUNNINGHAM, et al)
Plaintiffs :
)
vs. : Civil Action No. 2361-57
)
JOHN F. ENGLISH, et al :
Defendants)

MEMORANDUM OPINION

After twenty-two days of trial and when the plaintiffs had rested their case, the parties presented to the Court the consent order which is involved herein. The Court was not called upon to weigh the evidence which had been adduced.

The plaintiffs are rank and file members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated association. The defendants are an unincorporated association, and the officers thereof who were elected at the 1957 convention held in the City of Miami, Florida.

The action had been brought to restrain such officers so elected from assuming the duties of their offices upon the ground that the convention had been rigged and that the election of such officers was not an expression of the membership of such International Brotherhood. As a matter of convenience throughout this Memorandum the International Brotherhood above mentioned and the individual defendants will be referred to as the Teamsters.

By the consent order the individual defendants were permitted provisionally to assume the duties of the offices to which they had been elected.

Several motions are before the Court for decision. They will be dealt with separately. Because of its overall importance, the Court will first consider the petition of the Monitors for construction, reformation and/or modification of the consent order. The power and authority of the Court to reform or modify the consent order is challenged, it being asserted by the Teamsters that the consent order must be read literally. It seems appropriate that consideration of such question should have first consideration. The law relating to this controversy is fully expounded by Justice Cardozo in United States v. Swift & Co., 286 U. S. 106, wherein it is said:

> "We are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions though it was entered by consent. . . . Power to modify the decree was reserved by its very terms. . . . If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need. . . . We reject the argument for the interveners that a decree entered upon consent is to be treated as a contract and not as a judicial act."

The law so stated by Justice Cardozo has to the knowledge of this Court never been disturbed, altered or in any manner changed. The conclusion is reached that a construction of the consent order requires a determination of the basic purpose for which the order was entered. Bearing in mind that the individual defendants were permitted provisionally to assume office, it is clear from a reading of the consent order, that the basic purpose of the order was to pave the way for a new convention of the International Brotherhood and for a new election of officers in accordance with the provisions of the

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International constitution. The consent order was entered with the tacit understanding that the evidence which had been adduced at the trial for the purpose of establishing plaintiffs' claim that the Miami convention was rigged through corrupt practices for the purpose of permitting the leaders to control the action of the convention by depriving the rank and file membership of their democratic processes in the selection of delegates to such convention tended to prove that claim.

The consent order provided for the appointment of a Board of Monitors, one member to be selected by plaintiffs, one by the defendants and the third by the Court. The question arises as to what powers the Board of Monitors has. The Court is of opinion and holds that their powers were not limited but included all proper efforts on the part of the Board to assure the rank and file membership of the International organization that a new convention would be conducted according to the provisions of the International constitution and assuring the membership that their democratic processes would not be violated. In other words, the Board of Monitors was empowered to exert every known method of achieving the basic purpose as set forth in the consent order, to wit, that a new convention would be free of corruption and in recognition of the rights of the membership.

It was tacitly understood that the evidence which had been adduced showed that officials of the International organization and of many of the Locals were corrupt and a menace to the constitutional rights of the members. It, therefore, became necessary for the Monitors to proceed to see that the International and the Locals were freed of corrupt influences

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by the processes of a general housecleaning. The activities of the Monitors to accomplish such purpose gave rise to many of the difficulties presented by the motions now before the Court. The consent order places this duty and responsibility upon the Board of Monitors.

It must be kept in mind that the Monitors are officers of the Court and subject to its supervision and direction to effectuate the order according to its spirit and basic purpose. The Court does not subscribe to the view that the duties and privileges of the Monitors were merely advisory.

It is true that in the early days of the monitorship the Teamsters gave substantial compliance with the orders of recommendation but it may be observed that in those early days the work of the Monitors was preparatory to its vital purposes. The trouble arose when the Monitors proceeded to clean up the International organization and many of the Locals by seeking the dismissal of persons in position of power and authority who were known to be or suspected of being trouble makers and of a mind to control elections and conventions contrary to the constitutional rights of the members. At about this time the Monitors also set out to install by-laws in the Locals which would insure to the membership honest and uncontrolled elections. It was at this point that the Teamsters began to frustrate and block the Monitors in their efforts. In some instances they even refused to confer with the Monitors in a way which amounted to an unspoken rejection of the recommendations of the Monitors. This was in violation of their rights, knowing that if they doubted the reasonableness of such recommendations or doubted that the recommendations were pertinent to the basic purpose of the order, they had recourse to the Court. Upon such matters of disagreement, recourse has always been available to the Court for its ruling and determination of the existing controversy.

As has been indicated, the consent order is not to be construed by a literal reading of its provisions. The Monitors are officers of the Court and their powers are not limited by the grant of express powers. All other powers reasonably necessary to effect the basic purposes of the order are implied and available to the Monitors and in view of changed circumstances the inherent powers of the Court are at command to achieve the basic purposes of the order.

Such changed circumstances arose and have continued since the Teamsters ceased cooperation with the Monitors and refused or ignored the reasonable and relevant requests of the Monitors. The conduct of the Teamsters in such respect was in disregard of their obligations to afford good faith compliance with the reasonable and pertinent orders of recommendation issued by the Monitors.

Such rejection of the orders of recommendation was with full knowledge that the individual defendants were permitted provisionally to assume the duties of the offices to which they have been elected.

The language of the consent order carries the meaning that such permission to assume office is temporary and granted in view of existing known conditions and of assumed obligations. By definition and by nature a provision of this kind is subject to change.

The court has examined each of the orders of recommen-

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dation mentioned in the petition of the Monitors for construction, reformation and/or modification of the consent order as amended. The Court finds that each of such orders of recommendation is reasonable and relevant to the basic purposes of the consent order. The Teamsters are obliged to comply with such orders of recommendation and in good faith cooperate with the Monitors to achieve the purposes expressed therein.

It is unnecessary to specifically comment on the several orders of recommendation which have been ignored by the Teamsters. The Court, however, will mention them by number, namely, Numbers 4, 11, 12, 14, 16, 17, 18, 19, 20 and 21. As has been stated, each of these orders of recommendation is reasonable and relevant to the basic purposes of the consent order and is deemed to be of primary importance in the work of the Monitors.

When the consent order was considered and agreed upon it was believed that necessary preparation to assure that a new convention would be organized and conducted honestly without dictation of the bosses and in full accord with democratic principles in the interest of the dues paying members would be accomplished within one year and so the consent order was written in the belief and understanding that good faith compliance would be accorded by the Teamsters. Since the Teamsters have failed in that requirement and since the Teamsters have blocked and obstructed the efforts of the Monitors to achieve the necessary clean-up in the International and the Locals, the very essence of the consideration upon which the time element rested has been completely destroyed. The

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Court finds it necessary to modify and amend the consent order by deleting therefrom the privilege granted the Teamsters of calling a new convention after one year and inserting the following provision:

> "The time for the convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International, with the exact time of holding the convention being subject to the final approval of the Court."

The foregoing modification of the consent order becomes imperative since the Teamsters have, without the knowledge and consent or approval of the Board of Monitors or of the Court, issued a call for a convention in the early part of March, 1959. Such action on the part of the Teamsters was in disregard of their obligation to make good faith effort to pave the way for the new convention by cleaning house and making preparation for the return of control to the rank and file membership through democratic processes. The Court now declares such attempt to call a new convention is null and void and the Teamsters are ordered to promptly give appropriate notice to the membership that the convention will not be held as announced in the call.

The failure of the Teamsters to cooperate and to accord good faith compliance with the orders of recommendation of the Monitors to achieve the basic purposes of the consent order has occasioned loss of valuable time. Now that the views of the Court respecting many matters in dispute are known the Court will expect prompt compliance with such orders of recommendation which have been made and such reasonable orders of recommendation as may be made by the Monitors touching the matter of housecleaning and compliance with all provisions tending

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to assure that the next convention will be organized and conducted honestly in such a manner as to be free of control by labor bosses while promoting in all respects the interest of the dues paying members.

Remedies are not lacking in our judicial processes if the orders of the Court are violated, disregarded or ignored. As of now they need not be mentioned or considered.

The Second Amendment to the Petition for Construction requests the Court (a) to instruct the Monitors concerning the proper interpretation of Article X, Section 5(c) of the 1952 International Constitution; (b) to instruct the Monitors concerning the proper interpretation of the 1957 Amendment to Article X, Section 5(c) of the International Constitution dealing with the payment of one month's dues in advance by those members on check-off to insure their good standing; and (c) to determine whether or not there had been sufficient publication of the 1957 Amendment as a matter of law and whether there was a denial of due process. The Board raised these issues specifically with respect to Local 377 in Youngstown.

Under order of recommendation No. 23, regarding the eligibility of Joseph Larry Carrelly, William James Gaw and Joseph Sammartino, who were nominated for office in Local Union No. 377 of Youngstown, Ohio, the Board of Monitors ruled that there had not been proper promulgation of the 1957 Amendment to Article X, Section 5(c). The Local in Youngstown did not publish or post this Amendment on any bulletin boards and did not give notice to the members of the effective date of this Amendment. Carrelly did not receive a copy of the

March issue of The International Teamster and Sammartino and Gaw did not read the notice that appeared in the March issue. These men were working under a check-off and their employer paid the dues later than the first of the month. Further, these applicants had no opportunity to pay one month's dues in advance because they did not know of the Amendment and were not given reasonable notice of when the Amendment would be put into effect. Thus, there was a denial of due process in the application of this Amendment.

The 1957 Amendment to Article X, Section 5(c) was purportedly promulgated by being published in the March, 1958, issue of The International Teamster and that notice, a copy of which was attached to the Second Amendment as Monitors' Exhibit No. 27, stated that the Amendment was "now in effect". The 1957 Constitution became effective on January 31, 1958, with the entering of the consent order. Hence, this Amendment was effective on February 1 and March 1, 1958, and members who had not paid one month's dues in advance on those dates were disqualified. When it went into effect, members immediately became disqualified to run for office. The notice in the March issue stating that the new requirement was "now in effect" is a clear indication that it was in effect on March 4 or 5. There was no prospective effective date stated.

Inasmuch as the membership did not receive a reasonable time within which to comply with the new constitutional requirement, General President Hoffa should be ordered to republish this Amendment and put it into effect three months after its publication. Each local union should post it on its bulletin boards three times and notify all members of its publication and the effective date of the Amendment.

The Court sees another general objection to the 1957 Amendment. Under the check-off system the employer becomes the agent of the Union and as such withholds for the benefit of the Union the dues owed by its member employees. The 1957 Amendment requires payment of one month's dues in advance by members subject to the check-off system in order to qualify as candidates for office. Members of the Union not subject to the requirements of the check-off system who are, through favor or otherwise, permitted to pay their dues directly at the office of the Local are not required to make advance payment of dues. Any such privileged member therefore has an advantage over members subject to the system. The system affords the local labor bosses the opportunity to control the management of the Locals by limiting the number of members eligible for office. So operated the system amounts to a discrimination in favor of members permitted to make direct payment over those subject to the check-off system. It is a device by which incumbents are perpetuated in office. Because of such discrimination it is contrary to public policy and invalid.

The Monitors have questioned the legality of the merger of Locals 183 and 959 in Alaska. No direct reference may be found in the national Constitution as of 1952 nor as amended in 1957 to the subject so presented. Article XIX of both 1952 and 1957 provides, "No local union can dissolve, secede or disaffiliate while there are seven dissenting members." The official minutes of the December 12, 1957, meeting of Local 183 of Fairbanks, Alaska, indicates that twelve members

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voted against the consolidation of Local 183 and Local 959. The Courts and the National Labor Relations Board have set forth certain conditions which must be fulfilled. The consolidated unions must be of comparable size and must have an equal voice in deliberations; there must be an approximate equal division of officers between the unions; and the consolidation must reflect a truly democratic expression of the views of the membership. The Courts are in agreement that a vote taken on such an important issue as dissolution or merger is void where the members have not been sufficiently apprized before hand that anything so far outside the ordinary business of the union is to be presented at the meeting. This is particularly true where the meeting as in the present case on December 12, 1957, is a special and not a regular meeting. The notice given must be such that it can reasonably be concluded that in the ordinary course of events the membership generally if not entirely would have the opportunity of acquiring knowledge that the meeting was to be held and of the business to be transacted. The notice of the meeting must give its object and where the meeting is to deal with so important a matter as dissolution or merger, it is not sufficient to state that the meeting is very important. Notice must be timely as well as specific. The official minutes of the December 12, 1957 meeting of Local 183 of Fairbanks reflect that the question of merger was never presented as a single clear-cut issue. The approval of the merger was treated as a part of or as a prerequisite to the request for the granting of autonomy and the two questions were presented for a single vote.

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The record does not disclose that any sufficient and adequate notice had been given to the members that the question of merger would be considered and voted upon. The Court thinks that for this reason alone the merger so effected will be considered as void.

The Court is asked to consider and determine the applicability of Rule 23(c), Federal Rules of Civil Procedure, to the facts of the case.

The Court is presently of the opinion that the Rule is not applicable for the reason that the consent order is not a final settlement of any essential issue. The controlling issue in the case arose from the request of the plaintiffs that the individual defendants herein should not be permitted to assume the duties of the offices to which they had been elected. Such issue has not been determined. By the consent order such officers so elected were permitted to proceed upon the duties of their offices provisionally. Such permission was temporary only and subject to revocation. The Court views the consent order as procedural and within the control of the Court.

There has been presented to the Court for decision the motion of the Teamsters to disqualify and remove Godfrey P. Schmidt as a Monitor. The motion rests primarily upon the allegation that while serving as a Monitor the said Schmidt has continued to represent employers in collective bargaining negotiations with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; that Schmidt's representation of such employers having contractural relation with the International Brotherhood presents such a direct and

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clear conflict of interest on his part as to disqualify him from further service as a Monitor pursuant to the Court order. The Court finds that the Teamsters have failed to exhibit such conflict of interest as alleged. Accordingly the motion seeking the removal of Schmidt as Monitor is denied.

The Court requests the Chairman of the Board of Monitors to present for the purposes of the Court findings of fact, conclusions of law and an order consistent with this Memorandum Opinion.

F. Dickinson Letts
Chief Judge

December 11, 1958

Filed: Jan 30, 1959

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN CUNNINGHAM, ET AL., :
Plaintiffs, :
v. : Civil Action No. 2361-57
JOHN F. ENGLISH, ET AL., :
Defendants. :

OBJECTIONS OF DEFENDANTS TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER PROPOSED BY THE CHAIRMAN OF THE BOARD OF MONITORS

The Chairman of the Board of Monitors, at the request of the Court, has submitted 129 proposed findings of fact and 23 proposed conclusions of law. Defendants have general objections to both the form and the substance of the proposed findings and conclusions, and specific objections to many of the individual findings and conclusions as will be more fully set forth *seriatim*.

I

GENERAL OBJECTIONS TO THE FORM OF THE PROPOSED FINDINGS AND CONCLUSIONS

As is clearly stated in 9 Cyclopedia of Federal Procedure § 32.11, pgs. 483, 484 (3rd Ed. 1951), the findings of fact required by Rule 52 (a), F.R.Civ.P., are:

> ". . . ultimate facts upon which the law must determine the rights of the parties, corresponding to a special verdict of a jury and equally specific, and not a mere recital of evidence . . . A mere setting out of testimony, with a statement that the court finds it true, is not a finding which will support a judgment."

Further, the Rule

> ". . . does not require findings on all the facts presented but only on those ultimate facts essential to the decision and needed to inform the appellate court of its basis. A special finding should not be intermingled with mere evidence or reasons and should not contain or be a conclusion of law, although some legal inferences may be

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necessary and permissible in order to state an ultimate fact. . ."

The Chairman of the Board of Monitors in his proposed findings has not limited himself to ultimate facts but has therein digested large portions of evidence and testimony and set it forth in the form of supposed facts which he desires the Court to find. This is particularly important in view of proposed Order 9 which would require the publication of the Court's Memorandum Opinion of December 11, 1958, the Court's Findings of Fact and Conclusions of Law and Order. For example, findings 9, 10, 25, 27, 30, 40, 48, 50, 51, 56, 65, 83, 86, 94, 109, 113, 114, 128 are substantially nothing more than a recital of the Orders of Recommendation (9, 10, 27, 40, 48, 56, 65, 83, 86, 94, 109), Price Waterhouse reports (25, 30, 50, 51), the International Constitution (113-114) or a summary of everything that preceded it (128). The cost of printing this material has been estimated at in excess of $31,000. Many of the proposed findings also constitute, or are intermingled with, proposed conclusions of law, rendering them wholly improper as findings of fact.

It is respectfully submitted, therefore, that because of the manifestly improper form of the proposed findings and conclusions, the Court should not adopt them without a major revision.

II

GENERAL OBJECTIONS TO THE SUBSTANCE OF THE PROPOSED FINDINGS AND CONCLUSIONS

Without in any manner limiting or intending to limit the objections to individual findings and conclusions as is more fully set forth herein, defendants specifically object to findings designated 2, 3, 4, 5 and 6 insofar as they find or purport to find that the parties had any understanding, tacit or otherwise, that the Consent Order gave the plaintiffs, the Court or the Board of Monitors any rights, power or jurisdiction other than as set forth in the Consent Order. Further, and derivative from that general objection, defendants also object to each and every finding herein which finds or purports to find that it was agreed or understood that the Board of Monitors had any right or power to seek enforcement of its recommendations or that the Board of Monitors had any right even to make recommendations outside the specific area set forth in the Consent Order.

Finally, defendants offer a general objection to findings designated 5, 6, 12, 15, 21, 23, 24, 26, 32, 38, 46, 47, 61, 64, 68, 73, 78, 85, 92, 93, 118, 122, 123, 126, 128 and all others which find or purport to find that the defendants have acted in bad faith vis a vis the Board of Monitors. Not only are such findings wholly unsupported by any evidence in the present record but it is apparent now that the Chairman of the Board of Monitors has translated each and every area of disagreement into a finding of bad faith. Such a blanket condemnation finds no support in the record.

III

SPECIFIC OBJECTIONS TO PROPOSED FINDINGS

Following, seriatim, are defendants' objections to the findings proposed by the Chairman of the Board of Monitors, each objection bearing the number corresponding respectively to each of the Chairman's proposed findings to which objection is made.

1. Insofar as this purports to be summary of the original pleadings, it is incomplete and inaccurate. The pleadings should be allowed to speak for themselves. Neither the original nor the amended complaints sought supervision of

all local union elections. Paragraph 2 (c) of the prayer for relief in each complaint reads:

> "2. This Court appoint a receiver or board of receivers, a master in equity or masters in equity authorized
>
> * * * * *
>
> "(c) to confine his or their supervision and authority to enforcement and lawful application of said Constitutions *for the purposes of said National Convention election and the intra-local elections which must precede that election*, without any attempt at imposing on any member or subordinate body of the International Organization the judgment or preferences of said receiver or receivers, master in equity or masters in equity;" (Emphasis supplied)

As stated in the preamble to the Consent Order, the "amended complaint prays in the main for the calling of a new convention . . . and for a new election of officers in accordance with the provisions of the International's Constitution."

2. There was not one scintilla of evidence adduced during the hearing which would support such a finding. Not only was there no such "tacit understanding," it would be error as a matter of law to support any conclusion by such alleged "pre-compromise" talk.

3. This finding is also wholly unsupported by any evidence. There was no such understanding.

4. The Consent Order should be allowed to speak for itself. It contains no provision which specifically authorizes or directs a "general housecleaning" nor any from which this could reasonably be inferred. Further, there is not even a prayer for relief in either the original or the amended complaint which seeks such "supervisory powers." This finding, too, is wholly unsupported by any evidence.

5, 6. These findings contain several errors. Insofar as they are based on any "tacit understanding" or theory of "general housekeeping," they are wholly unsupported and subject to the comments made with respect to findings 2, 3 and 4. They entirely misconstrue the word "provisional" by equating it with "conditional" rather than "temporary" and far exceed not only the Consent Order but also the relief sought in the complaint, for the jurisdiction of this Court does not reach to local unions or their officers.

Far from revealing an attempt to "frustrate and block the Monitors," the evidence shows only that the defendants demurred in performing those acts which they believed beyond the scope of the powers given to the Board of Monitors, contrary to the International Constitution, not in the best interest of the Union or unreasonable. Defendants did not surrender any autonomy by the Consent Order; they agreed only to good faith consideration of the Monitor recommendations, not necessarily blanket compliance.

The statement that "defendant provisional officers never applied to the Court for its ruling" is correct but wholly misleading. Defendants were never under any obligation so to do. They were satisfied that their interpretation was correct. If the Monitors desired expanded powers, the burden was properly upon them to seek those powers.

7. The finding is correct but misleading. It ignores the four month period before the phrase "Order of Recommendation" was coined. It further overlooks the fact that Judge Nathan Cayton, former Board Chairman, reported to the Court on May 13, 1958, that "the Monitors had enjoyed the enlightened cooperation of the International Union." (D.Ex. 20, Initial Report of Board of Monitors, pg. 45)

8. This finding is misleading wherein it states that "the Board of Monitors issued Orders of Recommendation No. 5A

and 11 ordering the International Union to set aside nominations. . . ." Correctly stated, the Board of Monitors recommended that it be done. The recommendation was made on June 27, 1958, and was promptly followed. (Mon.Ex. 9; D.Ex. 20, pg.33; Proposed Finding #10)

10. If this finding purports to state the understanding of the Board of Monitors with respect to the surety bond situation ("no surety bonds have been posted by the officers handling money, viz Wainwright and Rounds (sic)"), then it is unobjectionable. However, the undisputed record reveals that they were, in fact, covered under the International's blanket bond. (D.Ex. 62; Tr. 311-312, 460)

11. This finding is objectionable insofar as it is nothing more than a recital of testimony. In addition, the grammatical construction is such that it is impossible to separate what is merely repetition of the Chairman's testimony from what is a finding by the Court.

12, 14. This finding is wholly erroneous. The International Union never refused to permit an audit. Three separate letters were written from the International to Local #245 - July 29, 1958 (D.Ex. 29); August 5, 1958 (D.Ex. 30); September 11, 1958 (D.Ex. 32). Each letter sought the locals cooperation with the Price-Waterhouse auditors. The finding more properly should read: "When the local officials of Local #245 refused to accede to a Price-Waterhouse audit, authorities at the International failed to order them to do so and failed to resort to the Constitutional intra-union coercion available to them." There is no basis in the record for a finding of bad faith.

15. This item is improper as a proposed finding of

fact. The finding of "reasonable and relevant" is no fact at all, but is a proposed conclusion of law. It is, in fact, covered by proposed conclusion 13. In addition, there is no basis in the evidence for a finding of bad faith.

16. There has been no necessary connection shown between the failure to order an audit in Local #245 and establish election rules therein and the release of the remaining trusteed locals.

17. This is an incorrect finding. Order of Recommendation #12 asked the General President to request McNamara to take a leave of absence. (Mon.Ex. 12) This was done. (D.Ex. 33)

18. This finding is wholly improper because it finds as a fact that Samuel Feldman of Local #929 attempted "to bribe an official of Horn and Hardart" and offered "to settle the strike for the payment of $50,000." These matters are only alleged and should be found only as an "alleged attempt" and an "alleged offer." In addition, the grammatical construction is such as to make it appear that Feldman was to pay $50,000 to the Horn and Hardart official and this is clearly incredible.

19. If this finding states that the Board of Monitors thought that "the vast majority of the members . . . were ineligible to run for office" no objection can be made. But, if it is intended that such be found as a fact by the Court, it is wholly erroneous and wholly without support in the evidence. The finding is confusing in that Monitor conclusions cannot be separated from what the Court is asked to find.

20. From a standpoint of time, this finding is unobjectionable. But, it is so phrased that a necessary inference is that there was some "cause and effect" relationship involved and this finds no support in the evidence.

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21. There is not the slightest foundation for a finding of bad faith. The General President did not "refuse" to appoint a committee as recommended; he merely "failed" to do so for a period of two weeks at a time when most of the efforts of all parties were necessarily devoted toward hearings before the Senate Select Committee. (Defendants'Memorandum in Response to Board of Monitors' Petition, pg. 7; Tr. 814.) A Committee was appointed September 10, 1958. If the Chairman intends to imply ("A letter of that date [September 10] was . . . received by them on September 12 . . .") that responses from the International Union are postdated such an improper insinuation finds no support in the record.

Although the General President did not specify which of the rules he did oppose, he set forth his views at some length in an accompanying letter (Mon.Ex. 62) and offered to meet with the Board of Monitors at any time. (Mon.Ex. 60.)

Contrary to the assertion in the finding, the record contains considerable evidence regarding the unconstitutionality and impracticality of the proposed rules. (Mon.Ex. 61, Tape 2-4, 8, Tape 2-11 to Tape 4-23; D.Ex. 55, Monitor Wells' dissent to Order of Recommendation #20.)

22. Insofar as this purports to quote Paragraph 9 (b) of the Consent Order, it is an obvious misquotation and one which tends to change the whole meaning of the Order. Paragraph 9 (b) reads:

> "The General Executive Board of the International shall recommend to its affiliated locals that such delegates be elected by secret ballot and, where practicable, under the supervision of such outside agencies as the Honest Ballot Association." (Emphasis supplied.)

23. There is no necessary correlation between the failure to institute the temporary rules and the release of

trusteed locals. Such a finding carries with it the necessary corollary that the International Union is incapable of formulating its own rules and applying them.

There is no evidence to support a finding of bad faith-disagreement, perhaps, but not bad faith.

24. There is no basis for a finding of bad faith and no basis upon which to conclude that the failure to order three minor audits could possibly have delayed anything.

25. See objection to findings designated 12, 14, 23 and 24.

26. This item is manifestly a conclusion of law and has no place as a proposed finding of fact. It is even repeated as proposed conclusion 13. Even as a conclusion of law, defendants deny its validity. In addition, there is no evidence to support the findings of bad faith.

28, 29. The substance of the testimony before the Senate Select Committee (Mon.Ex. 34) is not in evidence. A digest of the testimony dealing with the situation in Local #107 in Philadelphia was offered "simply to show that the material was furnished." (Tr. 143) It is not otherwise before the Court.

30. With the exception of 30 (o) and 30 (p), this finding is a reasonable characterization of the Price-Waterhouse report on Local #107. (Mon.Ex. 30.) To the extent that that is what it purports to be, there can be no objection. But, 30 (o) and 30 (p) are highly objectionable for the same reasons stated in 28 and 29. 30 (o) and 30 (p) are solely from Senate Select Committee testimony and not in evidence. In addition, 30 (p) is objectionable insofar as it attempts to draw a conclusion.

31. This finding is objectionable insofar as it confuses several dates. The decision not to press the General

President "to declare . . . an emergency . . . and appoint a temporary trustee [for Local #107]" was in June of 1953. (Mon. Ex. 6; Tr. 269) The Price-Waterhouse report was not issued until September 2, 1953. (Mon.Ex. 30) Consequently, the Board of Monitors could not have pressed for the declaration of an emergency in June based partly on a report made available in September.

32. This finding is wholly unsupported. Order of Recommendation #4 contemplated a Price-Waterhouse audit of Local #107. (Mon.Ex. 6) This was begun immediately and not concluded until September. (Mon.Ex. 30) In view of this, it can hardly be said that the "General President immediately embarked upon a policy of delay and frustration."

There is no evidence to support a finding that the public member had not been notified immediately.

33. This finding contains two clear inaccuracies. The General President addressed a telegram to Cohen, not a letter. (D.Ex. 3) While the evidence fails to reveal whether the International followed up on the surety bond matter, it does not affirmatively show failure to do so. (Tr. 459)

34. Such a finding is improper in that it attempts to characterize the article in question. The article, appearing on page 10 of the August issue of "The International Teamster" should be allowed to speak for itself. That page, however, is not in evidence. (Mon.Ex. 44 is page 7 of the magazine only - Tr. 173) The Chairman paraphrased the article (Tr. 173): "Mr. Cohen and the members of the Local Board 107 requested that there be a hearing on this trusteeship." That is the sole permissible reference to the article and will not support this finding.

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35. There is no showing that the procedure was "unprecedented and clearly illegal" and none that the action "facilitated the obtaining of a court order." See comment to finding 37.

36. There is no testimony with respect to "prior arrangements . . . with local union 107." (Tr. 486-487.)

37. This finding contains a clear misstatement of fact. As the motion papers reveal (Gen.Ex. 32), there were three general bases for seeking an injunction - (1) that both the General President and the Board of Monitors have prejudged the case; (2) that the public member cannot properly hear the case; (3) that there are not books available to the local properly to prepare a defense.

38. This purported finding is clearly a conclusion of law and is, in fact, repeated in part as conclusion 13.

There is no factual basis on this record to support the derogatory findings of "bad faith," "broken promises," "delay" "collusion," etc. and they should be stricken.

39. This, too, is quite clearly a conclusion and an order and is also reprinted in substantial part as conclusion 13.

45. Again the proposed finding misquotes the Order of Recommendation. See comment to proposed finding 17. In addition, Article XVIII, Section (c) of the International Constitution makes action by the General President discretionary if a local union fails to act.

46, 47. Insofar as these proposed findings are findings and not conclusions (they are also substantially reprinted in conclusion 13), there is no foundation in this record for any of the derogatory characterizations of bad faith.

52. By no stretch of the imagination could this be

called a finding. It should be stricken.

54. This finding is proper but it fails to find that the National Cash Register project will take several years more to complete (Tr. 616) and that as of now 71% of the membership is covered by the system. (Tr. 599, 616)

55. The testimony before the Senate Select Committee is not before the Court and, consequently, this finding, in its entirety, should be stricken. In addition, it is, in reality, nothing more than a recital of proposed finding 56.

58. The "constitutional quibble" referred to in this finding is, in reality, an important question regarding who properly acts in the event of the General President's disqualification. The General Secretary-Treasurer pointed out that the First Vice President would be the proper person to act in the place of the General President. (Mon.Ex. 36; D.Ex. 57, pg. 23, Article VI, Section 8) This cavalier reference is illustrative of the manner in which the Chairman has treated each and every question raised by the International Union.

59. The Monitors' Supplemental Order of Recommendation of August 21, 1958, and letter of September 3, 1958, did not "dispose of all constitutional objections." The International Union still objected to the employment of named special counsel. (Mon.Ex. 40)

61. This proposed finding contains several errors. Suspension pending the filing of charges is clearly at war with the International Constitution. (D.Ex. 57, pg. 68, Article XVIII, Section 1 (d)) The Michigan Conference Welfare Fund, and the trustees thereof, are not subject to directions from the International Union. (Tr. 357) Further, there is no basis on this record for a finding of bad faith.

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62. This proposed finding is grossly improper because it consists of nothing more than a recital of testimony and is, in addition, clearly a conclusion of law. As a conclusion, it is wholly invalid.

63. This, too, is wholly a conclusion of law and, as a conclusion, is invalid. See objections to findings 2-6.

64. This is yet another conclusion. It is repeated as conclusion 13 and any finding of bad faith is wholly without foundation.

68. This is still another conclusion of law and is repeated as conclusion 13. The record affords no basis for a finding of bad faith.

69. The reference to the Consent Order should be section 3.

71. The finding is correct, but incomplete and misleading. The panel report was submitted after the Board of Monitors had left and then decided. (Tr. 397)

72. The finding omits the important fact that the Chairman was advised of the decision by an attorney for the International. (Tr. 170-171, 398) Even more importantly, the news story contains no such quotation as is in the proposed finding. (Mon.Ex. 44)

73. There is no basis for any finding of bad faith. The circumstances of the whole affair merely indicate a most unfortunate misunderstanding. (Tr. 394-399)

75. The article, printed in full in finding 74, should be allowed to speak for itself and not be characterized in this manner.

78, 79. There is no factual basis for any of these findings. Defendants' Exhibits 15 and 17, the explanation for not publishing the Orders of Recommendation, stand unchallenged on this record. The bad faith finding is wholly unsupported.

81. This is clearly a conclusion of law and objectionable therefore. As a conclusion, defendants deny its validity. The Consent Order by its very terms, requires the Board of Monitors to advise the General Executive Board, not the general membership.

83. Such a finding has no proper place herein and should be stricken as scandalous. By such a finding, the Court will make an adjudication of liability in any prospective libel suit. As such the finding is grossly improper.

84. A finding that Order of Recommendation #19 is "reasonable and relevant" is clearly a conclusion of law. As a conclusion, defendants deny its validity.

85. The finding of bad faith is wholly without foundation on the present record.

89. The record discloses only that a majority of the Board of Monitors believed such a posting of eligibility lists was necessary. The finding regarding the eligibility situation in two local unions (out of 893) is merely a recital of testimony and has no place in findings of fact.

90. This is essentially the same as proposed finding 21. See defendants' comments thereto.

91. This characterization of Monitors' Exhibit 61 is wholly improper. The transcript of the session in question should be allowed to speak for itself. There is no need to characterize it in any way.

92. Insofar as this purports to find the temporary election rules are "reasonable and practical and relevant" it is a conclusion of law. As a conclusion, defendants deny

its validity, particularly since it declares the rules "practical" without having heard, or even asked for, evidence specifically directed thereto.

There is no foundation on this record for a finding of bad faith.

95. This purported finding is quite clearly a conclusion and as a conclusion its validity finds no support in the present record.

96. Accurately stated, the testimony reveals approximately $20,000 cash in bank and $15,000 in unpaid bills. (Tr. 681)

97. Carr was appointed Acting Secretary-Treasurer of both local unions. (Tr. 637)

98, 99. The findings should properly state that there was no "express" authorization. (Tr. 650-653) The witness also stated that he may have attended "four" meetings rather than "three." (Tr. 650)

103. Insofar as this purports to find inadequate notice, it is purely a conclusion of law and, as a conclusion of law, has no validity on the basis of this record. The whole series of findings relative to "notice" fail to mention television notice, broadcast in the Fairbanks area. (D.Ex. 71)

105. The record clearly reveals that although the two issues may have been voted upon together, they were discussed separately. (Tr. 647)

107. This purported finding is wholly a conclusion of law and, as a conclusion, defendants deny its validity.

110. In this, and subsequent findings, the name Gow is improperly spelled "Gore."

115. In finding that "the Board of Monitors found

that . . . ," this finding is merely a recital of testimony and, as such, is objectionable. If it is to be included, it should properly state that the Board of Monitors "contended. . ."

116. Due to the faulty grammatical construction of the finding, it is impossible to determine whether the second section is judicial finding or merely a contention of the Board of Monitors. If it is intended as a proposed finding, it is clearly in error; if a contention of the Board of Monitors, it is merely evidentiary and should be stricken.

118. Stated in those terms, this purported finding is quite obviously a conclusion of law and, as a conclusion, defendants deny its validity.

There is no basis on this record for a finding of bad faith. Again, as in each and every other instance, the Chairman of the Board of Monitors has translated an honest difference of opinion into a finding of bad faith.

119, 120. There is no foundation to a purported finding which speaks of a "pattern of resort to various courts in order to delay and frustrate . . . the Monitors." The finding refers to two court actions filed (Mon.Ex. 32, Mon.Ex. 53). An attorney represented the International at each of these proceedings, (Tr. 277, 369) and defended the position of the Monitors. In one he was successful; in the other not. (Tr. 533-540)

121, 122, 123. These purported findings, insofar as they are findings of fact and not conclusions of law, are all based on the false foundation of some "tacit understanding" prior to and at the time of the Consent Order. As such, they are all covered by defendants general objections and by the comments to proposed findings 2-6.

124, 125. There has been no formal convention "call" issued. There had been arrangements made and a "call" authorized - but no "call." (Tr. 631,542) In any event, Paragraph 8 of the Consent Order provides, in pertinent part, as follows:

> "A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order [January 31, 1958] when the General Executive Board by majority vote shall resolve to call such convention and hold such election."

126. This purported finding is wholly a conclusion of law and is highly improper. As a conclusion of law defendants deny its validity. The findings of bad faith are wholly unsupported by the record.

127. This, again, is not a finding of fact. It is, at best, a conclusion of law and, as a conclusion, it has no validity and is unsupported by proper findings. It is an unwarranted and wholly improper modification of what was essentially a contractual act and is beyond the jurisdiction and power of the Court.

128. Insofar as the 29 sub-sections of this purported finding are solely repetition of matters already considered in earlier findings of fact, defendants incorporate by reference herein their objections to each of the findings. Defendants also incorporate by reference herein all their general objections relating to the so-called "tacit understanding," the alleged "basic purpose of the Consent Decree" and any findings of "bad faith." Defendants also incorporate the specific objections noted with respect to proposed finding 127 in that none of these alleged changed circumstances are sufficient, as a matter of law, to warrant the slightest modification in the decree. Without intending to limit the scope of the foregoing general objections, defendants also interpose the following specific objections to

the proposed finding:

(1)(3) See objections to proposed findings 2 through 6.

(2) The record, as set forth supra, supports only a finding that the defendants failed to accede to certain Monitor recommendations. No further finding is supportable.

(4) The record is clear that the delay in releasing trusteed local unions has been solely that of the Monitors. See defendants' Memorandum in response to the Monitors' original petition, pg. 2 and pg. 3.

(5) This finding is wholly unintelligible. Order of Recommendation #4 deals with Local #107 in Philadelphia and has not the slightest bearing on Local #245 in Springfield. (Mon. Ex. 6)

(6) These so called temporary rules were promulgated on August 19, 1958. (Tr. 199) The rules were not adopted, the General President explaining that he wanted to discuss the matter with the General Executive Board and appointing a committee to confer with the Monitors. (Tr. 205-206) The rules were redrafted and re-submitted on October 24, 1958. (Tr. 213) Was the Union to promulgate rules by August 27th that were changed on October 24th?

(7)(8)(9) See objection to proposed finding 21.

(10) See objection to proposed findings 12 and 14.

(11) This finding is unsupported. No access was denied by defendants. The situation is the same as with Local #245 - every step short of intra-union coercion was taken. (D.Ex. 6, 36 and 37; Tr. 306)

(12)(13)(14)(15)(16)(17). See objection to proposed findings 16, and 26. Further "Defendants Exhibit 1," quoted in

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proposed finding 14, has no application. Quite obviously the Chairman is referring to Defendants Exhibit 20.

(19) See objection to proposed finding 33. (Tr. 459)

(20)(21) See objections to proposed findings 58 and 59. (Mon.Ex. 33)

(22) There is no support for the characterization - "deceptive tactics, etc." See Tr. 64.

(23) See objections to proposed findings 34, 72, 73, and 75.

(24) See objections to proposed findings 124, 125.

(25) See general objection and specific objections to findings 2-6.

129. No such inference can properly be drawn from defendants reliance upon only one of eight charges. In fact, Mr. Schmidt's response actually admitted charges 5, 7 and 8.

IV

OBJECTIONS TO PROPOSED CONCLUSIONS OF LAW

Insofar as the proposed conclusions of law purport to modify the Consent Order unilaterally and without the consent of one party therein, construe it in such a way as to substantially vary its form, expand the carefully limited powers and duties of the Board of Monitors beyond those specified in the decree, base any such conclusions upon any "tacit understanding" as to the "basic purpose" of the decree, grant mandatory power to the Board of Monitors or put the onus upon the defendants to appear in Court and object to specific future Orders of Recommendation - in these respects, defendants respectfully state that proposed conclusions 1-13 have no validity.

14. There is no finding to support such a conclusion. Findings 27-33 are wholly silent in this area. Even were there

such findings, such a conclusion from the testimony adduced (Tr. 271) would not be valid.

15. Such a conclusion finds no support in any correct finding. See findings 95-106 and objections thereto.

16, 17. These purported conclusions are not in accord with page 10 of this Court's Memorandum Opinion which held the provision discriminatory and void as against public policy.

18. Defendants only concede that the International Constitution holds such power. The prior conclusion, i.e., that the Board of Monitors has authority "to order . . .," falls within the scope of defendants general objections to proposed conclusions 1-13.

19, 21. See general objections to proposed conclusions 1-13. Defendants' Memorandum in Opposition, pgs. 16-22.

20. No finding supports such a conclusion. Notwithstanding, the proposed convention has been cancelled and the membership notified in the January issue of "The International Teamster."

22. Without expressing any opinion as to the reasons herein assigned, defendants agree that Rule 23 (c), F.R.Civ.P. is inapplicable.

23. The evidence adduced, together with Mr. Schmidt's admission of three charges was clearly sufficient to warrant disqualification.

V

OBJECTIONS TO PROPOSED ORDER

Insofar as the proposed order necessarily flows from the proposed findings of fact and conclusions of law, defendants' general and specific objections thereto are incorporated herein by reference. Quite apparently, the defendants will not be able to publish material in "The International Teamster" in the February issue and, in some instances, notification at February meetings will likewise be impossible. In addition, defendants interpose specific objections to paragraphs 8 and 9.

8. The requirement that the International state to its membership that "the Court has found that the Defendant International has presented no evidence" and that the motion "was wholly without merit" is manifestly unreasonable. The Court's opinion states: "The Court finds that the Teamsters have failed to exhibit such conflict of interest as alleged." The International should be required to go no further.

9. The International has been advised that it would cost in excess of $31,000 to publish all the material listed herein. Such an expenditure is also wholly unreasonable.

/s/
Edward Bennett Williams

Raymond W. Bergan
Raymond W. Bergan
1000 Hill Building
Washington 6, D. C.
Attorneys for Defendants

I hereby certify that copies of the foregoing Objections have been mailed, first class postage prepaid, this 20th day of January, 1959, to Martin F. O'Donoghue, Esquire, 831 Tower Building, Washington 5, D. C., Godfrey P. Schmidt, Esquire, 12 East 41st Street, New York 17, New York, and L. N. D. Wells, Esquire, 1610 National Bankers Life Building, Dallas 1, Texas.

Raymond W. Bergan

1

Filed: Jan. 30, 1959 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN CUNNINGHAM, ET AL., :
Plaintiffs :
v. : Civ. No. 2361-57
JOHN F. ENGLISH, ET AL., :
Defendants :

ADDITIONAL FINDINGS OF FACT PROPOSED BY DEFENDANTS

In addition to the findings of fact proposed by the Chairman of the Board of Monitors, defendants propose the following additional findings for adoption by the court:

1. On October 23, 1957 the court granted a preliminary injunction which prevented the officers elected at the 1957 International Convention from assuming offices and which withheld the effectiveness of the 1957 International Constitution.

2. On January 23, 1958 this preliminary injunction was dissolved.

3. The Consent Order, filed on January 31, 1958, was entered after presentation of the plaintiffs' case and before any defense evidence had been offered. (Tr. 717-718)

4. Judge Nathan Cayton was appointed Chairman of the Board of Monitors on January 31, 1958, and sworn on February 4, 1958. (D.Ex. 20, pg. 1-2)

5. In Judge Cayton's letter of resignation, dated May 13, 1958, he reported to the court that the Monitors had received "the enlightened co-operation of the International Union." (D.Ex. 20, pg. 45)

6. Martin F. O'Donoghue, Esquire, was appointed Chairman of the Board of Monitors on May 27, 1958. (D.Ex. 20, pg. 11)

7. On June 27, 1958, the offices of the Board were removed from the Teamster International Building to the Tower Building and were located in the offices of Chairman O'Donoghue. (D.Ex. 20, pg. 11)

8. On July 2, 1958, General President Hoffa agreed to the establishment of a $5,000.00 revolving expense fund to pay the operating expenses and staff salaries for the Board of Monitors. (D.Ex. 20, pg. 11)

9. With the approval of the International Union, staff members have been hired by the Board of Monitors. At one time the professional and secretarial staff numbered four on a permanent basis and one consultant on a per diem basis. (D.Ex. 20, pg. 12; Tr. 296-299)

10. In its initial report, the Board of Monitors stated unto the court that they had no information of current conflicting financial interests on the part of any International Officer. (D.Ex. 20, pg. 5)

11. Of the 109 local unions in trusteeship at the time of the Consent Order, 41 were restored to autonomy by May 13, 1958. (D.Ex. 20, pg. 7) The Monitors, on June 13, 1958, requested that no others be released and none have been. (D.Ex. 20, pg. 22-23)

12. The Board of Monitors reported to the court that the Price-Waterhouse survey of the International found that "the accounting records in the Washington Office of the International Union are complete, orderly and well kept in accordance with high standards of accounting practice, and that the people responsible for the accounting work are highly competent and have a high degree of intelligence and earnestness about their work." (D.Ex. 20, pg. 21)

13. The September 4, 1959 meeting of the General Executive Board approved blanket position bond coverage in the amount of $30,000.00 for all officers and employees of the International Union and its subordinate bodies. (Tr. 293-294)

14. Order of Recommendation #1, dated June 2, 1958, was fully and completely complied with. (Tr. 260)

15. There was no Order of Recommendation #2. (Tr. 260)

16. Order of Recommendation #3, dated June 4, 1958, was fully and completely complied with. (D.Ex. 20, pg. 29; Tr. 266)

17. Pursuant to Order of Recommendation #4, the International Union appointed a panel to conduct a hearing to determine whether Local #107 should be placed in trusteeship. (D.Ex. 20, pg. 25; Tr. 271) The panel contained a public member, a departure from Union practice. (Tr. 271) Further pursuant to this recommendation, Price-Waterhouse conducted an examination of the books and records of this local union which were then in the possession of the Senate Select Committee. (Tr. 272)

18. At the request of the Board of Monitors one of the panel members was changed. (D.Ex. 20, pg. 26; Tr. 275)

19. Before the panel proceeded to Philadelphia to conduct the hearing, an injunctive action was brought in the Philadelphia Court of Common Pleas based, inter alia, on the fact that the local union had no books with which to conduct its defense. (Mon.Ex. 32; Tr. 276-277)

20. Counsel for the International appeared in Philadelphia to defend the position of the International and of the Board of Monitors. The injunction, however, was issued. (Tr. 277)

21. During the course of the hearing on the Monitors' petitions, International Counsel stipulated that the hearing would proceed if the local was provided with the books and records necessary to make a proper defense. (Tr. 112-113)

22. Order of Recommendation #5A, dated June 17, 1958, was fully and completely complied with. (D.Ex. 20, pg. 22)

23. There was no Order of Recommendation #6. (Tr. 292)

24. Order of Recommendation #7 required no action by the International Union. (Tr. 293)

25. Pursuant to Order of Recommendation #8, the International Union ordered summer meetings held in Local #282, New York City, beginning with the July meeting. (Tr. 300)

26. Order of Recommendation #9, dated June 27, 1958, reported the change of address for the Board of Monitors and asked that a notice of this change be placed in the International Teamster. (D.Ex. 25) The August issue contains such an announcement. (D.Ex. 26)

27. Pursuant to Order of Recommendation #10, Cohen and Grace secured a bond in the amount of $25,000.00 prior to the institution of the blanket bond coverage. (Tr. 308-309)

28. Pursuant to Order of Recommendation #11, the election scheduled in Local #245 was immediately cancelled and the officials of the Local were requested and instructed to co-operate with Price-Waterhouse. (Tr. 313-318; D.Ex. 4, 29, 30, 32)

29. Pursuant to Order of Recommendation #12, John McNamara was requested to take a leave of absence from offices in Locals #808 and #295 (D.Ex. 6; Tr. 325-326) and the officers of those Locals instructed to co-operate with Price-Waterhouse in having an audit performed. (D.Ex. 36 and 37)

30. John McNamara is presently released on bail as a result of a Certificate of Reasonable Doubt issued by a Justice of the New York State Supreme Court, New York County. (D.Ex. 34; Tr. 327-331)

31. Counsel for the International Union stipulated during the hearing that if the New York County District Attorney would release the books and records of Locals #295 and #808, the Price-Waterhouse audit could proceed. (Tr. 335)

32. A compromise arrangement to that proposed in Order of Recommendation #13 was approved. (D.Ex. 39; Tr. 339-340)

33. Pursuant to Order of Recommendation #14, personnel of Price-Waterhouse have had numerous meetings with representatives of the International and at least one meeting with the representative of National Cash Register Company. (Tr. 345) Counsel for the International stipulated during the hearing that the Price-Waterhouse representative would be allowed to appear before the next general meeting of the General Executive Board. (Tr. 349)

34. There has consistently been substantial compliance with the procedures set forth in Order of Recommendation #15. (Tr. 351)

35. Pursuant to Order of Recommendation #16 and the Supplement thereto, General President Hoffa advised the Board of Monitors that he would prefer charges against Vice-President Brennan. (Mon.Ex. 40) Pursuant to the International Constitution, Hoffa, as the charging party, would thereupon be disqualified from hearing any portion of the case. (D.Ex. 57, pg. 67, Art. XVIII, Sect. 1(c))

36. Pursuant to Order of Recommendation #17, Samuel Feldman of Local #929 in Philadelphia was ordered suspended

(D.Ex. 43), charges were preferred against him (D.Ex. 13), and a hearing begun. (Tr. 367-368)

37. The Chairman of the Board of Monitors was advised at the very first opportunity that the General Executive Board had inadvertently decided the Joint Council #13 election appeal without consulting the Monitors. (Tr. 170-171; 398)

38. Pursuant to Order of Recommendation #19, General President Hoffa assumed original jurisdiction over the local trial of Glenn Smith and H. L. Boling of Local #525 (Tr. 372) and preferred charges against them. (D.Ex. 46-47)

39. When Smith and Boling sought a State Court Injunction, counsel for the International appeared and defended the position of the General President and the Board of Monitors and was successful in having the injunction vacated. (Tr. 369)

40. Hearings have been held in the case of Smith and Boling. (Tr. 369)

41. Order of Recommendation #20, relating to rules for conducting elections, was issued on August 19, 1958. (Tr. 199) The rules were re-drafted and re-submitted on October 24, 1958. (Tr. 213) The General President, on September 10, 1958, appointed a committee to meet with the Monitors. (Tr. 205-206)

42. Three meetings were arranged between the Chairman of the Board of Monitors and the General President's Committee. All were unavoidably cancelled. (Tr. 405-406)

43. The membership of Local #183 before the merger was 500-600. (Tr. 413, 685)

44. The membership of Local #959, on December 6, 1957, voted approval of a merger with Local #183 by a vote of 475-0. (Tr. 640)

45. The members of Local #183, on December 12, 1957,

voted approval of a merger with Local #959 by a vote of 114-12. (Tr. 662)

46. Following the Monitors' Order of Recommendation #21, relating to the dissolution of the merger between Locals #959 and #183, Alaska, telegrams, letters and petitions bearing 450-500 names were received by the International. These petitions were from former members of Local #183 and all supported the merger. (D.Ex. 73; Tr. 412, 697)

47. The 1952 International Constitution had consistently been interpreted, when the question was specifically presented, to require rigid adherence to Article X, Section 5 (c) in that monthly dues had to be received by the local union on or before the first business day of the current month in advance. (Tr. 417)

48. Article X, Section 5 (c) was modified by the 1957 Constitution to permit payment of one month's dues in advance to protect a member's good standing. (D.Ex. 56, 57; Tr. 421-423)

49. This change became effective with the Consent Order and the membership was so advised in the March issue of "The International Teamster." (Mon.Ex. 27)

50. The Board of Monitors was invited to attend the September 16, 1958 meeting of the General Executive Board to discuss the calling of a new Convention. (Tr. 423)

51. Following the discussion, a resolution was offered and unanimously adopted empowering the General President and the General Secretary-Treasurer to make all arrangements for such a Convention to be held after February 1, 1959. (D.Ex. 61; Tr. 428-430)

APPROVED:

JUDGE

LAW OFFICES
EDWARD BENNETT WILLIAMS
1000 HILL BUILDING
WASHINGTON 6, D. C.
METROPOLITAN [illegible]

Submitted by:

Edward Bennett Williams

Raymond W. Bergan
1000 Hill Building
Washington 6, D. C.

I hereby certify that a copy of the foregoing Additional Findings of Fact has been mailed first class postage prepaid to Martin F. O'Donoghue, Esquire, 831 Tower Building, Washington 5, D.C., Godfrey P. Schmidt, Esquire, 12 East 41st Streeet, New York 17, New York, and L.N.D. Wells, Jr., Esquire, 1610 National Bankers Life Building, Dallas 1, Texas.

Raymond W. Bergan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

JOHN CUNNINGHAM, ET AL.,
Plaintiffs

v.

JOHN F. ENGLISH, ET AL.,
Defendants

Civil Action No. 2361-57

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon reading and considering the Petition of the Board of Monitors for Construction, Reformation and/or Modification of the Consent Order and for Instructions and Orders of Compliance, and the Amendments thereto, the Plaintiffs' Motion for Construction, Reformation and/or Modification of the Consent Order, the Defendants' answer in Response to the Monitors' Petition and Amendments, and the Plaintiffs' Motion, the Defendant International Brotherhood's Motion for Removal of Godfrey P. Schmidt as Monitor, and Monitor Schmidt's Affidavit in Response thereto;

Upon hearing and considering the oral testimony and documentary evidence adduced by the Monitors, and the Defendants on November 5, 6, 7, 10, 12, and 13, 1958, the Court makes the following

FINDINGS OF FACT

1. This class action was filed to set aside the 1957 Miami convention of the defendant, International Union, on the grounds that the delegates to that convention had not been elected in compliance with the terms of the International Constitution and that the convention had been rigged through conspiratorial action by the defendant

officers and those in concert with them. That the illegal election and credentialing of delegates and the conspiracy by the Defendant officers to rig the 1957 convention and to perpetuate themselves and their associates in office over long periods of time by their control of delegates to conventions had been accomplished by the defendant officers and those in concert with them, planning, perpetuating and tolerating within the International Organization and within its subordinate bodies many and serious violations of the law and of the IBT Constitution; namely, the denial of democratic procedures to the membership; the unlawful and unconstitutional imposition of trusteeships over local unions, widespread and serious violations of interunion disciplinary procedures and a failure to honestly and in good faith exercise existing judicial powers to prevent and remedy violations of the constitution; misuse of union funds by officers for their own private gain; failure to abide by recognized fiduciary standards for the handling of funds and moneys; threats, coercion and other lawlessness in many local unions; existing conflicts of interest among many officers; and the domination by some local unions of gangsters, racketeers and extortionists.

Therefore, the amended complaint further charged all acts and actions of the 1957 convention, including election of officers were null and void and said officers should be restrained from assuming the rights and duties of officers as a result of the action of the 1957 convention. That the only possible way in which an election could be honestly conducted was by the appointment by this Court of a Master to supervise local union elections, to prevent the current disinfranchisement of members in locals, to supervise the enforcement of other provisions of the International Union's Constitution and to return responsible stewardship to the International Union, that an honest election of delegates and the holding of a convention could only be held after the current constitutional abuses have been corrected.

2. That, after twenty-two days of trial, a Consent Decree was signed on January 31, 1958, with the tacit understanding of the parties and the Court that, in entering the Consent Decree, the evidence submitted during the twenty-two days of trial tended to establish the claims of the Plaintiffs as set forth in the Complaint that the 1957 Miami Convention was "rigged" through corrupt practices for the purpose of controlling the action of the Convention by the incumbent officers and, thereby, depriving the rank and file membership of the democratic process in the selection of delegates to said Convention and that the delegates to the Convention had not been selected or elected by the rank and file membership according to the terms and provisions of Article III, Section 5 of the 1952 Constitution.

3. It was the tacit understanding of the parties and the Court in entering the Consent Order that the evidence adduced at the trial tended to establish that the officials of the International Union and of many of the locals were corrupt and a menace to the constitutional rights of the members.

4. The basic purpose and spirit of the Consent Decree was to pave the way for a new convention and a new election of International officers in strict compliance with the provisions of the International Constitution through the exercise of supervisory powers by the Monitors to see, among other things, that the International and the locals were freed of corrupt influences by the process of general housecleaning.

5. The Consent Decree was entered into on the basis and with the understanding that, if the individuals

who were elected at the challenged 1957 Miami convention were permitted to assume their offices on a provisional and temporary basis, these provisional and temporary officers would cooperate with and, in good faith, assist the Monitors in accomplishing the basic purpose and various provisions of the Consent Decree as necessary preparations and conditions precedent to be accomplished prior to the holding of any convention, namely the timely release of trusteed locals under democratic election procedure that would safeguard the secrecy of the ballot and the proper qualifications of members of trusteed locals to run for office; the establishment of democratic safeguards in the election of officers in autonomous local unions; the establishment of proper auditing procedures; the establishment of auditing and reporting procedures between local unions and the International and other subordinate bodies; the drafting of model by-laws for local unions and amendments for the International Union, incorporating and integrating the auditing and reporting procedures and the rules for election in the model by-laws for local unions and the amendments for the International's Constitution; the removal of all forms of corruption and wrongdoing throughout the International; the removal of all forms of conflict of interest; the removal of all forms of corruption and wrongdoing in the local unions and in the International. The Court finds that the Defendant provisional officers have made no good faith effort to assist or to cooperate with the Monitors in accomplishing the basic purposes and the various provisions set forth in the Consent Decree but embarked upon a course of attempting to frustrate and block the Monitors in carrying out the necessary preparations prior to the holding of a convention.

6. It was the understanding of the parties and the Court in entering the Consent Decree that these provisional

and temporary officers, in fulfilling their obligation to assist and cooperate in good faith with the Monitors in accomplishing the basic purposes and various provisions of the Consent Decree, would give good faith compliance to reasonable and relevant recommendations made by the Monitors. The Court finds that the Defendant provisional officers have not given good faith compliance to the recommendations of the Board of Monitors; that the Defendant provisional officers have refused to comply with the reasonable and relevant Orders of Recommendation of the Monitors and that such refusal has been in bad faith, designed to frustrate and block the Monitors in their efforts to effectuate the Consent Decree according to its spirit and basic purpose. That the Provisional Officers, if they doubted the reasonableness of the recommendations or doubted that the recommendations were pertinent to the basic purposes of the order, had recourse to this Court. That the Defendant provisional officers never applied to the Court for its ruling and determination of any existing controversy but embarked upon a course of destroying the basic purpose and spirit of the Consent Decree.

7. That, in the early days of the Monitorship with the work of the Monitors in a preparatory stage and the Monitors only beginning to effectuate the basic purposes of the Consent Order, the Defendants substantially complied with the Orders of Recommendation of the Board of Monitors.

8. The Court finds that trouble and conflict developed between the Defendants and the Board of Monitors when the Monitors began to make recommendations to the Defendant provisional officers with respect to the holding and conducting of democratic elections in trusteed local unions, more particularly the Court finds that conflict first developed when the Board of Monitors issued Orders of Recommendation No. 5A and 11 ordering the International Union

to set aside nominations in trusteed Local Union 245 of Springfield, Missouri.

9. In order to guarantee democratic safeguards for the nomination and election of officers in trusteed local unions, the Board of Minotors issued Order of Recommendation No. 5(a) on June 17, 1958, which, among other things, provided as follows:

> "The Board of Monitors yesterday agreed to request the General President's office to withhold setting up any election dates with regard to trusteed locals being released from trusteeship and returned to self-government.
>
> "The Board of Monitors desires to investigate the election procedure that will be established in each trusteed local released from trusteeship, and to consult with the General President's office and the General Counsel relative to establishing uniform rules and regulations on the election procedure.
>
> "The Board of Monitors voted to send William C. Humphrey to Springfield, Missouri, to investigate election procedures of Local 245. The Board of Monitors requests the General President's office to issue a letter advising the trustees of Local 245 to render all assistance to William C. Humphrey, field employee of the Board of Monitors, when he arrives in Springfield, Missouri, relative to the proposed election of Local 245, and to show him any and all documents and eligibility lists as he may require."

The Court finds that there were fifty-four local unions to be released from trusteeship on the date of the issuance of Order of Recommendation No. 5(A).

10. A few days later, the Board of Monitors issued Order of Recommendation No. 11 dated June 27, 1958, which provided as follows:

> "William C. Humphrey was dispatched by the Board of Monitors to Springfield, Missouri, to investigate complaints concerning the nomination and election of officers of Local Union 245, scheduled for June 27-29, 1958. Mr. Humphrey reported in full detail to the Board of Monitors that nominations were conducted by craft groups in the local union from May 13 to May 21.

"A number of individuals, including Claude Harthcock and Don McClinton, were nominated to oppose Branch Wainwright for the office of President and Business Representative. Others, including John Rogers, were nominated to oppose A. J. Round for the office of Secretary-Treasurer and Business Representative. After these men were nominated, a committee was appointed by the Chairman to check the eligibility of the nominees. Harthcock, McClinton and others were declared ineligible because their employers did not pay their dues within the time limit prescribed by the Constitution. The employers, under a check-off agreement, were responsible for paving dues. These men were ruled as not being in good standing for a period of two years prior to their nominations. The minutes of the meeting of May 20, 1958, contains the following entry:

> 'Brother McClinton says he has Company receipts showing that his dues are paid on or before the first and wants to know if the Trustee Representatives are going to rule him ineligible. Brother Schneider said he is ineligible according to the Constitution since his dues were not paid at the Union office on or before the first Business Day.'

"The dues delinquency occurred in 1956, according to the best relief of Field Examiner Humphrey.

"Further, membership attendance records were not kept by the officers of Local 245 in conducting craft meetings and members attended various craft meetings.

"The Board of Monitors, therefore, recommends to the General President that the election of officers for Local 245 scheduled for June 27, 28, 29 be postponed indefinitely; that the nominations conducted be cancelled and set aside because clearly members eligible for nomination for office were declared ineligible; and that the method and manner of conducting the nominations were contrary to the Constitution. The Board of Monitors recommends that a new date for nominations be set; that posting of notice for nominations be set at least one month in advance; that a list of all eligible men to run for office be posted simultaneously with the posting of the time, date and place of nominations; that a meeting for nominations be held on a Sunday afternoon beginning at 2 P.M. in an appropriate place in the City of Springfield, Missouri; that the Board of Monitors will also send a Field Examiner to check the lists of eligibility for nominations in the local union.

> "The Board of Monitors will also recommend that Price Waterhouse conduct a two year audit of books and records of this local union because no certified audit has been made of the books and records of said local union for a long period and no surety bonds have been posted by the officers handling monies.
>
> "The Board of Monitors issues this order pursuant to Section 3 and Section 7 of the Court Order."

The Court finds that the Defendant General President ordered the election of officers scheduled for June 27, 28, 29 in Local 245 be postponed indefinitely. The Board of Monitors found that the nominations were conducted for each branch of the local union on different nights and that the entire membership never knew who was being nominated or who was eligible to run for office. The Board of Monitors recommended certain rules for the holding of new nominations and elections. The Board of Monitors recommended that Price Waterhouse conduct a two-year audit of the books and records of Local 245 because no certified audit had been made of the books and records of the local union for a long period and no surety bonds have been posted by the officers handling money, viz Wainwright and Rounds.

11. The Court finds that the Monitors wanted to use Local 245 of Springfield, Missouri, as a guide for the future election rules and procedures that would be issued by the Monitors for trusteed local unions as well as autonomous local unions. The Chairman of the Board of Monitors testified that the Board of Monitors studied the auditing reports forwarded to the International Union from the officers of Local 245, to wit A. J. Round and Branch Wainwright, who had been appointed as officers of this local union by the trustee, Harold J. Gibbons, Executive Assistant to the General President of the International. That, in the judgment of the Board of Monitors, it was necessary that a certified

audit be made as the records revealed that no certified audit had been made during the period of the trusteeship and that the officers, A. J. Round and Branch Wainwright, had not been bonded. The Monitors requested Price Waterhouse to conduct this audit so that a cut-off date could be established when the local union would be returned to autonomy and as of that date there would be a complete certified audit of the monies collected and disbursements made and of the entire financial affairs during a period of at least two years prior to the date of the election. Thus there would then be a complete up-to-date audit on the cut-off date when the local would assume its own financial responsibility and the supervision of the International would end. Through its audit Price Waterhouse was also to establish a list of members who were eligible to be nominated and also a list of those eligible to vote in the forthcoming election.

12. The Defendant International and the Defendant provisional officers refused, in bad faith, to permit Price Waterhouse to audit the books and records of Local 245, a Trusteed local under the direct supervision of the Defendant Provisional General President. The evidence discloses that Price Waterhouse dispatched a man from their St. Louis office to Springfield, Missouri, to audit the books and records of Local 245. That Round and Wainwright, the officers appointed by the Defendant International and in charge of the local's books and records, refused to permit the accountant from Price Waterhouse to audit the books and records. The Court finds that the Provisional General President and other officers of the Defendant International were fully apprised of the fact that these local union officers would not permit Price Waterhouse to audit the books and records of this local union and made no effort to make such an audit possible.

13. The Court finds that the Provisional General President and the Provisional General Secretary-Treasurer had ample constitutional authority and power, as provided in Article X, Sections 11 (a), (c) and (d), of the 1957 Provisional Constitution, to order the books and records of this local union audited by Price Waterhouse and such constitutional authority or power lodged in the Provisional General President and Provisional General Secretary-Treasurer to carry out Order of Recommendation No. 11 issued by the Board of Monitors.

14. The Court, therefore, finds that the Defendant International refused and the Defendant Provisional General President refused to permit Price Waterhouse to audit the books and records of Local Union 245. That the Defendants refused to accede to the request of the Board of Monitors to establish election procedures for Trusteed Local 245 and to publish a list of members eligible for nomination as well as an eligibility list of those qualified to vote.

15. The Court, therefore, finds that the provisions of Order of Recommendation No. 11 were reasonable and relevant to the basic provisions of the Consent Order and that the Defendant International acted in bad faith and refused to comply therewith.

16. That, as a result of the failure of the Provisional General President and the Defendant International Union to direct and order an audit of the books and records of Local 245 and also establish rules and procedures for nominations and election of officers in Local Union 245 as recommended by the Board of Monitors in Orders of Recommendation No. 5A and 11, the release of the remaining fifty-four trusteed local unions has been delayed and defeated, as provided by Section 7 of the Consent Decree.

17. That conflict further developed between the Monitors and the Defendant International Union when the Board of Monitors issued Order of Recommendation No. 12 on July 10, 1958, requesting the Provisional General President to order John J. McNamara, Secretary-Treasurer of Local 808 and President of Local 295 of New York City, who had been convicted of the crime of extortion, to take a leave of absence from offices of both of these local unions pending appeal. The Board of Monitors also recommended that Price Waterhouse audit the books and records of Local 808 and Local 295.

18. At approximately the same time, the Board of Monitors issued Orders of Recommendation No. 16, dealing with charges filed against Vice President Owen Brennan, and Supplemental Order of Recommendation No. 16 dated August 21, 1958, and Order of Recommendation No. 17 dealing with the suspension of Samuel Feldman of Local Union 929 of Philadelphia, Pennsylvania, for attempting to bribe an official of Horn and Hardart Company during a strike and offering to settle the strike for the payment of $50,000. Also, simultaneously, Order of Recommendation No. 19 was filed recommending the filing of charges against Glen W. Smith and H. L. Bolling of Local No. 515 of Chattanooga, Tennessee, for allegedly paying the sum of $20,000 in an effort to fix a criminal case involving officers and members of a Teamsters local union and Supplemental Order of Recommendation No. 19 dealing with the General President assuming immediate jurisdiction of this case under Article XVIII of the Constitution.

19. That, at the same time, the Board of Monitors issued Order of Recommendation No. 20 dated August 19, 1958, in which the Board forwarded to General President Hoffa temporary rules and regulations for the conduct of elections and nominations in local unions. These temporary rules were

based on the same pattern as the temporary rules and regulations requested for Local Union 245 of Springfield, Missouri. General President Hoffa was requested to appoint a Committee by August 27, 1958, to meet with the Monitors and their staff concerning these temporary rules for elections so that these rules could be placed in effect by September 15 for the forthcoming Fall, 1958, elections in local unions, both for trusteed local unions and autonomous local unions. The Board of Monitors, from their experience, realized that, because of the restrictive rule of the International Union requiring a member to be in good standing for a period of two consecutive years prior to nomination, the vast majority of the members of local unions were ineligible to run for office as set forth in the Seconded Amended Complaint. In one local union of three thousand men, only approximately thirty-one men were eligible to run for office. That it was essential in securing democratic elections that members of local unions know beforehand who were eligible for nomination in order to avoid what has so often occurred, namely, that members would nominate men who were not eligible to run for office. It was also essential that members of local unions know who were eligible to vote.

20. The Court finds, therefore, that, immediately after the issuance of Orders of Recommendation No. 11, 12, 16, 17, 19, 20, dealing with the filing of charges for expulsion of Brennan, Smith, Bolling and Feldman, and the leave of absence of McNamara, as well as the issuance of the temporary rules for the nomination and election in trusteed and autonomous local unions and the auditing of the books and records of Local 295, 808 and 245, trouble immediately ensued and a conflict developed between Defendants and the Board of Monitors.

21. The Court finds that it was at this point that it became clear that the Defendants were not acting in good faith with the Monitors. The Court finds that the Defendants began to block and frustrate the Monitors in their efforts to effectuate the spirit and basic purposes of the Consent Decree. Not only did the Defendant Provisional General President fail and refuse to appoint a committee to meet with the Board of Monitors by August 27 to consider the temporary rules for elections in trusteed locals and autonomous locals. but the Provisional General President did not answer the Monitors' request until September 10. A letter of that date was addressed by him to the Board of Monitors and received by them on September 12, stating that certain of the temporary election rules were unconstitutional and others unworkable. The Court finds that the Provisional General President did not specify in the letter of September 10 (Monitors Exhibit No. 60) which rules were unconstitutional or unworkable, nor was any testimony offered or adduced at the hearing to support this statement.

22. The Board of Monitors, in the Temporary Rules for Elections, provided that the Honest Ballot Association or the American Arbitration Association would supervise the elections of trusteed locals, as well as autonomous locals, for a temporary period of time, more particularly those elections in autonomous local unions that were forthcoming in the Fall of 1958. Rule 10 of the temporary rules for elections provides as follows:

> "Arrangements for the election shall be made and the balloting shall be supervised by the Honest Ballot Association or the American Arbitration Association if either of these organizations has facilities to do so . . .".

The Court finds that this rule was made inasmuch as Paragraph 9 of the Consent Decree provides that in the election of delegates to the new convention, "such delegates shall be elected by secret ballot and, where practicable, under the supervision of such outside agency as the Honest Ballot Association".

23. The Court finds that the Board of Monitors desired that these temporary rules for nomination and election of officers in trusteed and autonomous local unions be put into effect by September 15, 1958, and the elections conducted under the supervision of the Honest Ballot Association or the American Arbitration Association or some other similar agency so that these outside agencies would acquire experience in conducting elections in Teamster local unions and, therefore, would gain the necessary experience to conduct the election of delegates to the new convention provided for in Section 9 of the Consent Decree. Further, the Court finds that the experience gained by the Board of Monitors and the Honest Ballot Association would also assist in the drafting of election provisions in the model local union by-laws and election amendments to the International Constitution, as provided by Sections 4 and 11 of the Consent Decree. The Court further finds that, because of the delay and refusal of the Provisional General President and the officers of the International to cooperate in putting into effect these temporary rules for elections, much valuable time has been lost in releasing the trusteed local unions and of having local union elections conducted under democratic procedures and safeguards as provided by the Consent Decree and as recommended by the Board of Monitors. That the Provisional General Officers, in bad faith, refused to comply and cooperate with the Monitors in effectuating the spirit and purposes of the Consent Decree.

24. The Court finds that the Defendant provisional officers, by refusing in bad faith to issue a direct order permitting Price Waterhouse to audit the books and records of

Local 245 of Springfield, Missouri, and Locals 808 and 295 of New York City, have delayed and thwarted the basic purposes of the Consent Decree.

25. The Court finds that Price Waterhouse, in its initial survey of the scope of auditing required, recommended to the Board of Monitors under date of June 10, 1958, the following scope of auditing that should be undertaken:

> "If these suggestions meet with the approval of the Monitors, we would be pleased to incorporate in our auditing work a study of this general field of activity to the end that we could make specific proposals (a) governing the arrangement and scope of auditing, and specifically the independence of auditors; (b) governing the form of reporting, the flow of reporting responsibility and the content of reports; and (c) governing the particulars of an appropriate policy statement (or Constitutional amendment) with reference to these matters. A review of audit reports now in the files of the International Union would be useful for this purpose.
>
> "We will endeavor to report our findings and recommendations in this area of activity in such a way as to make it possible for the Monitors to incorporate them into a model code of local union by-laws should this prove to be desirable. We are aware that the consent order of the District Court makes the preparation of such a code a specific assignment for the Monitors, and it could well be that the code would be preferable to a Constitutional provision as the vehicle for promulgating the standards of conduct involved here."

The Defendant Provisional General President and the Defendant International have refused to permit Price Waterhouse to audit the books and records of Locals 245, 808 and 295 and have prevented the Monitors from carrying out the basic purposes of the Decree, namely Section 5 of the Decree, and by such actions the Defendant Provisional General President and the Defendant International have also defeated the efforts of the Monitors in revising local union by-laws and amendments to the International Constitution, as provided by Sections 4 and 11. The Court finds that, as the Chairman of the Board of Monitors testified, the drafting of the local union by-laws and the amendments to the International Constitution was dependent and related to the uniform auditing procedures developed by Price Waterhouse.

26. The Court finds that Orders of Recommendation Nos. 4, 11, 12, 14, 16, 17, 18, 19, 20 and 21 are reasonable and relevant in effectuating the basic purposes and spirit of of the Consent Decree and that the Defendant International and the Defendant provisional officers have, in bad faith, first delayed, then ignored and refused to carry out these Orders of Recommendation from the Board of Monitors. Specific findings on each particular order will hereinafter be made.

ORDER OF RECOMMENDATION NO. 4

27. The Court finds that Order of Recommendation No. 4 was issued on June 13, 1958, and provided in substance as follows:

> The past two days the Board of Monitors has had under consideration charges filed with the Board of Monitors by a Rank and File Committee against certain officers of Local Union No. 107. These charges are based upon the testimony adduced before the Senate Select Committee. On Wednesday, the Board of Monitors had Edward Bennett Williams, the General Counsel, and his staff present before the Board of Monitors for a discussion of this case. Following the discussion of the case, the Board of Monitors made the following recommendations to General Counsel Williams to take up with General President Hoffa:
>
> 1. That charges would be preferred against Local 107 to take it under trusteeship and that trustee proceedings would be instituted pursuant to Section 5 of the International Constitution and the hearing would be conducted on the charges to ascertain whether or not trusteeship should be imposed.
>
> 2. The panel to be appointed to hear the trusteeship proceedings was to consist of one International Vice President, one disinterested member of the International in the area and a public member. This public member was to be either Father Comey, S.J., of the Labor School of St. Joseph's College, Philadelphia,

> or Professor Taylor, formerly Vice Chairman of the National War Labor Board and now attached to the University of Pennsylvania, or some individual of like stature and standing equipped in the labor relations field.
>
> 3. It was further agreed that Price Waterhouse, certified public accountants, were to be authorized by the Board of Monitors to contact the Senate Select Committee and audit and review the books and records of Local 107 and the auditing work sheets of the Senate Select Committee in order to examine the evidence that the Senate Select Committee now has so that this evidence could be presented in an orderly and proper fashion before the panel.
>
> 4. That the International Union should immediately notify the bonding company that has now current and in operation a fidelity bond covering the officer or officers of Local 107 in view of the disclosures made by the Senate Select Committee.

28. The Court finds that the evidence developed by the McClellan Committee and further substantiated by the Price Waterhouse report (Monitors' Exhibit No. 30) reveals serious facts dealing with the mismanagement of the financial affairs of officers of Local 107.

29. The Court finds that the charges against the officers of Local Union 107 developed in the McClellan Hearings and further supported by the report of Price Waterhouse (Monitors' Exhibit No. 30) reveal facts dealing with mismanagement of the financial affairs of Local 107 of Philadelphia, Pennsylvania.

30. The Price Waterhouse report disclosed numerous irregularities in the financial affairs of Local o07:

(a) A special agent of the Federal Bureau of Investigation testified that some twenty-three checks totaling $4,986.27 made payable to Joseph E. Grace, the President of the Local Union were forged. The endorsement on these checks was not the signature of Mr. Grace. The checks were signed by Grace and Cohen, officers of Local 107. Both Grace and Cohen refused to testify concerning these checks and invoked the Fifth Amendment.

(b) Thirteen checks were made payable to Ben Lapensohn, Business Agent, for "personal services", totaling $12,186.22. The Secretary-Bookkeeper of Local 107, a Mr. Hartsell, invoked the Fifth Amendment when asked to explain these checks.

(c) The Price Waterhouse report also disclosed that there were sixteen checks in the sum of $10,804.32 made payable to one Jerome Friedman, an insurance broker who handled the insurance of Local 107. The report discloses that information from the Senate Select Committee files state that the written endorsements were forgeries and were not the signatures of Mr. Friedman. Information from the Senate Select Committee files also discloses that Mr. Friedman did not receive the proceeds of these checks.

(d) Local 107 made a check payable to Local 169 of the Teamsters in the amount of $4,573.43 for money advanced by Local 169 to Raymond Cohen when he was running for the office of Business Agent. After Cohen was elected as Business Agent, he and Grace signed a check and repaid the money back to Local 169.

(e) Further forgeries were revealed in the Price Waterhouse report -- a check in the sum of $2,500 made payable to David Tanner. The endorsement was a forgery and Tanner did not endorse the check.

(f) A forgery of a check in the sum of $1,000 made payable to David Tanner and Tanner's name was forged on the reverse side of the check for endorsement. This check was cashed in the office of Local 107.

(g) A check made payable to David Tanner in the sum of $200 dated May 20, 1955, was forged with Tanner's endorsement. This check, likewise, was cashed in Local 107's office.

(h) A check in the sum of $150 made payable to David Tanner. The endorsement of Tanner was forged.

(i) A check in the sum of $1,000 dated January 10, 1956, payable to Joseph E. Katz, an attorney. The endorsement of Katz was forged and the check cashed. Katz testified before the Senate Select Committee that he did not receive the money.

(j) The Price Waterhouse report discloses that two checks totaling $25,000, one of $15,000 made payable to cash and the other in the sum of $10,000 made payable to cash, involved financial irregularities. This sum was purported to have been used by Local 107 to pay the members for strike benefits, time lost organizing, grievance meetings and election expenses.

(k) A document of Local 107 supporting the expenditure of $25,000 was obtained from the Senate Select Committee and included in the Price Waterhouse report listing the names of the members of Local 107 and the purported amount of money which each member was supposed to have received opposite his name. A Joseph Cadigan of the Federal Bureau of Investigation testified before the Senate Select Committee that there had been forgeries entered on this list where someone had increased the amount to a higher amount, such as $50.00 increased to $500, $100 increased to $300, and that these changes by forgery amounted to $4,003.75. Price Waterhouse also reported (see page 46, Monitors' Exhibit No. 34) that the Senate Select Committee had in its files signed statements from a number of members of Local 107 who stated that they did not receive the amount of money set opposite their names.

(l) The Price Waterhouse report also disclosed that there are questionable items expended through the payment of the sum of $8,500 to a Mr. Samuel Kirsch, purported to be for "election expenses". This sum was represented by two checks, one in the sum of $4,500 and marked "repayment of expenses". The other, in the sum of $4,000, was made payable to Samuel Kirsch and marked "returned election expenses". On page 43 of the Price Waterhouse report, it is stated that a Senate Committee investigator had talked with Mr. Kirsch, who is an advertising solicitor employer by Ben Lapensohn, a former Business Agent of Local 107, and that Kirsch stated he cashed these checks and turned the money over to Lapensohn.

(m) Price Waterhouse further reported a questionable expenditure of $3,210.08 of Local Union 107 money that was used to pay for clothing and other personal expenses of Raymond Cohen, the Business Manager of Local 107.

(n) There is a further questionable expenditure of $8,851.66 of miscellaneous expenses paid for Raymond Cohen (see page 55 of the Price Waterhouse report). This included hotel bills for Cohen and his family in Florida, insurance premiums on his yacht and boat equipment, rental of a house in Florida and telephone and utility bills.

(o) Further serious charges developed in the testimony before the Senate Select Committee that Ben Lapensohn, an offier of Local 107, was given certain shares of stock and other monetary benefits by the President of Food Fair, a large grocery chain. That Raymond Cohen, the Business Manager, together with Lapensohn, also received certain stocks from Food Fair at a low market price. That Food Fair was allowed certain exceptions under the collective bargaining agreement, namely allowed an unlimited number of drops. That is, a truck driver with a trailer would come up and leave the trailer drop at a Food Fair store and then would continue about his business. The driver did not have to wait around while the trailer was unloaded. The other grocery chains in the City of Philadelphia were not allowed this unlimited number of drops per day. The testimony before the Senate Select Committee revealed that it took the other chain food stores in the Philadelphia area approximately two years to obtain the same favorable working conditions that had been given to Food Fair.

(p) The receipt by Cohen and Lapensohn, officers of Local 107, of certain gifts of stock and other monetary benefits from the President of Food Fair, together with the granting and the allowing of the unlimited number of drops to Food Fair, warranted charges being placed against Local 107 and its officers and for placing this local union in trusteeship because of the breach of their fiduciary obligations as officers of the local union and by giving certain preferences to Food Fair as against the other food chains.

(q) The Price Waterhouse report stated that the report should be read and evaluated on the basis that although officers of Local 107, when called upon to explain the numerous forgeries and other discrepancies in the financial accounts, before the Senate Select Committee, all invoked the Fifth Amendment, in an internal hearing before a panel appointed to place the local under trusteeship, the officers of Local 107 would have to appear before the panel of the International in their fiduciary capacities and would be compelled to explain the various forgeries and irregularities in the handling of the finances (see page 3 to 5 of the Price Waterhouse report), and would and could not properly invoke the Fifth Amendment because their duty as fiduciaries and officers would compel them to explain and account for this money.

31. In reliance on the assurance of the Defendant's General Counsel that the Defendant Provisional General President and Defendant International would take prompt action to institute trusteeship proceedings, the Board of Monitors did

not press the provisional General President to declare that under Article VI, Section 6(a) of the Constitution, an emergency existed as a result of the Senate Select Committee's testimony, and the Price Waterhouse report and, pending a hearing, to immediately appoint a temporary trustee over the affairs of Local 107. But acting on the assurances of the General Counsel that charges would promptly be filed and a hearing promptly conducted on these charges by the panel, consisting of an impartial outside person, namely, F. Joseph Donohue, an attorney in Washington, D.C., the Board of Monitors agreed to the procedure of having a hearing on the charges for the placing of Local 107 in trusteeship.

32. The Court finds that the Defendant Provisional General President immediately embarked upon a policy of delay and frustration. As late as July 9, 1958, the public member, F. Joseph Donohue, had not received official notice of his appointment and it became necessary for the Chairman of the Board of Monitors to demand that the public member be officially notified of his appointment by the provisional Defendant General President.

33. On June 13, 1958 by Order of Recommendation No. 4 and again on June 17, 1958 in Order of Recommendation No. 5, the Board of Monitors recommended that in light of the testimony of the Senate Select Committee regarding forgeries and other financial irregularities concerning the financial affairs of Local 107, that notice of possible monetary loss be given to the appropriate bonding company under the fidelity bond. On August 12, approximately two months later, the Defendant Provisional General President, after urging by the Board of Monitors, addressed a letter to Raymond Cohen of Local 107, requesting business manager Cohen to file such notices. The Court finds, however, that the testimony disclosed at the trial that the Defendant International Union

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did not follow this matter up to see that this notice of loss was properly filed with the bonding company. That the International Union does not know whether or not Local 107 ever complied with the provisional General President's request and that counsel for the International testified that he did not know whether or not any notice of loss had ever been filed with the bonding company.

34. Despite the fact that no action had been taken or initiated by the local union or by the Defendant International as a result of the Senate Committee's disclosures, except at the persistent urging of the Board of Monitors, the August, 1958, monthly magazine of the Teamsters' International Union, called the "The Teamsters", falsely stated and published an article to the membership that the trusteeship panel "had been established at the request of Ray Cohen and other members of the local executive board."

35. The Board of Monitors requested the General Counsel of the International to notify the Board of Monitors of the preparation of the charges and of the notice of hearing. The Chairman of the Board of Monitors forwarded to the General Counsel a memorandum on the law of due process in conducting inter-union disciplinary proceedings. This memorandum made clear that notice of charges and the date of the hearing must be served upon the local union and its officers, that due process must be had before local unions could be placed in trusteeship, and that the provisions of the Constitution must be carried out strictly (see Monitors' Exhibit No. 28). Contrary to the agreement and without notice to the Board of Monitors and in violation of the Monitors' Order of Recommendation No. 4, the Provisional General President resorted to the unprecedented and clearly illegal procedure of directing the same panel which was later to hear the charges, to proceed to Philadelphia and conduct a preliminary

investigation prior to the filing of charges. This action by the provisional Defendant General President facilitated the obtaining of a court order by the Officers of Local 107 enjoining the proceedings. An injunction was obtained in the State Courts of Pennsylvania.

36. The record further discloses with regard to Order of Recommendation No. 4 that the Chairman of the Board of Monitors forwarded to General President Hoffa on September 2, 1958 a copy of the Price Waterhouse report, Board of Monitors' Exhibit No. 30. In the Monitors' letter of September 2 the Provisional General President was requested to file charges against Local 107 for the appointment of a trustee in accordance with the provisions of Article VI, Section 6(a) of the Constitution, that by September 15, a copy of the charges be furnished to the Monitors and that by October 1, 1958, a hearing be conducted on the charges. It was recommended that the charges be based on the complaints filed by the Rank and File Committee of 107, the evidence developed by the Senate Select Committee and the enclosed Price Waterhouse report. The Provisional General President was further informed that Mr. Herz of Price Waterhouse had expressed his willingness to assist whomever the provisional General President may designate to draw the charges. The evidence further discloses, as testified to by the counsel for the Defendant International, arrangements had been made by some unknown International official that a hearing would be held by the panel in Philadelphia on September 11 and prior arrangements had been made both with local union 107 and the panel. Accordingly, on September 8 the Provisional General President forwarded a copy of the Price Waterhouse report to Raymond Cohen, Secretary-Treasurer of Local 107, and advised him that a panel "as proposed by the Monitors" would be in Philadelphia to conduct a preliminary

investigation on September 11, 1958 (see Monitors Exhibit No. 31, R. 141).

37. The Court finds that, on September 10, Raymond Cohen and Joseph Grace, the President of Local 107, filed a complaint in equity against the International Brotherhood of Teamsters on the basis that the panel which was being sent in to investigate charges was the same panel which was later going to hear the same charges and, further, that the Board of Monitors had no authority or power to issue any Orders of Recommendation and were merely advisory. That the panel was not properly constituted under the International's Constitution (see Monitors' Exhibit No. 32, R. 142). A preliminary injunction was later issued. A further ground of contention by Local 107 is that they were, without their books and records, unable to defend themselves in that said books and records were in control of the Senate Select Committee. The evidence discloses that counsel for the Defendant International never notified the Board of Monitors that the panel was proceeding to Philadelphia without a copy of the charges being filed or a notice of hearing; that the panel was sent to Philadelphia in direct contravention of the Board of Monitors Order of Recommendation No. 4.

38. The Court finds that the Order of the Board of Monitors, Order of Recommendation No. 4, was reasonable and relevant to the basic principles of the Consent Order and that the Defendants, in bad faith, refused to comply with the terms and provisions of that Order. That the conduct of the Defendants exhibited a bad faith pattern of broken promises with the Board of Monitors, delay, collusion and refusal to remedy what admittedly was wrongdoing by the officers of Local 107.

ORDER OF RECOMMENDATION NO. 11

39. The terms and provisions of Order of Recommendation No. 11, issued by the Board of Monitors on June 27, 1958, have been previously set forth in these Findings of Fact in Paragraph No. 10. The Court finds that the provisions of Order of Recommendation No. 11 are reasonable and relevant to the basic issues of the Consent Order; and that the Board of Monitors have the power and authority under the Court Order to prescribe rules for the nomination and election of officers in trusteed locals, and also in autonomous local unions, preparatory to writing a model code of by-laws for local unions. The Board of Monitors' order recommending an audit of the books and records of Trusteed Local 245 in order to establish a cut-off date when the trusteeship would end and the autonomy of the local be restored so that there would be proper beginning of a new auditing period for the fully autonomous local, was reasonable and proper and should be carried out.

ORDER OF RECOMMENDATION NO. 12

40. On July 10, 1958, the Board of Monitors issued Order of Recommendation No. 12 which, in substance, provided as follows:

> Inasmuch as John J. McNamara, President of Local Union No. 295 and Secretary-Treasurer of Local Union No. 808, has been convicted of extortion, the Board of Monitors recommends that Mr. McNamara be requested by General President Hoffa to take a leave of absence from his office as President of Local Union No. 295 and also from his office as Secretary-Treasurer of Local Union No. 808, until his appeal has been decided.
>
> The Board of Monitors also recommends that Price Waterhouse and Company be authorized to make a one-year audit of the books and finances of Local Union No. 808.
>
> The General President is requested to communicate with the Board concerning this matter by July 16, 1958.

41. Subsequently, the Monitors recommended that an audit also be made of the books and records of Local 295 of New York City. This local union was in trusteeship under International supervision. John J. McNamara was appointed president of that local by the trustee and was under the direct supervision of the International Union and the Defendant Provisional General President.

42. The Court finds that a committee of five members of Local 808 appeared before the Board of Monitors. They stated they had never been able to get a full and complete audit from the officers of this local. The documents presented to the Board of Monitors disclose that there was a discrepancy in the reports of the assets of Local 808 as reported to the Secretary of Labor under the Taft-Hartley Act from an audit rendered by the officers to the local union. Because of the testimony revealed by the Rank and File Committee, the Board of Monitors recommended that an audit be made of the books of Local 808 and also of Local 295. Local 808 was an autonomous local.

43. The Court finds that from July 10, the date of the issuance of the Order of Recommendation, until August 13 no audit had been made of the books and records of Local 808 and Local 295 by Price Waterhouse & Co. The letter from Mr. Theodore Herz, resident manager of the Washington office of Price Waterhouse discloses that they had their New York office attempt to reach Mr. McNamara, the financial secretary of Local 808, and that the New York office was unable to contact him. That a Mr. Fitzpatrick, who identified himself as a business agent of Local 808 stated that he could not authorize Price Waterhouse to audit the local's books. Further, with respect to Local 295, Price Waterhouse could not contact Mr. McNamara to audit the books and records of Locals 808 and 295. In fact, Mr. Burton, an officer of Local 295, stated

to the representative of Price Waterhouse that Local 295 had not received any letter from General President Hoffa. The Court finds that there was ample constitutional authority under Article X, Section 11(a), (b), (c), (d) and (e) of the 1957 provisional International Constitution for the Defendant Provisional General President to issue an order to Local 295 and Local 808 that the books and records of both of these local unions be audited by Price Waterhouse as provided by Order of Recommendation No. 12. From August 13 until after September 2, the Board of Monitors further attempted to secure authority from the International to issue an order to both local unions to permit Price Waterhouse to audit the books and records with no success.

44. After Order of Recommendation No. 12 was issued, it was not until August 12, 1958--a month after the Order of Recommendation No. 12 was issued--that the Defendant General President, after conferring with McNamara by telephone, requested McNamara to take a leave of absence from office as Secretary-Treasurer of Local 808.

45. The Defendant Provisional General President refused to take any action with respect to compelling McNamara to take a leave of absence from Local 808. McNamara answered the request to take a leave of absence by stating that he would take a leave of absence but would report the matter to his local union and let the membership of the local union decide whether or not he should take a leave of absence. The Board of Monitors was advised on or about September 16, 1958 that the local at a membership meeting had refused to accede to McNamara's request to take a leave of absence and McNamara, the convicted extortionist, still remains in office. The Provisional General President took no further action. The Constitution provides in Article XVIII, Section 13(a) that when a member (or officer) is convicted of a crime

or serious wrongdoing it shall be the "duty of the local union to revoke the membership of such members."

46. The Court, therefore, finds that, when the Local Unions 808 and 295 engaged in stalling tactics to obstruct Price Waterhouse from undertaking its auditing work, the Defendant Provisional General President refused in bad faith to take any affirmative action against the local unions to carry out the reasonable order of the Board of Monitors, although he had ample and sufficient power under the provisional Constitution to do so.

47. The Court finds the provisions of Order or Recommendation No. 12 were reasonable and relevant to the basic purposes of the Consent Order but the Defendants, in bad faith, refused to comply therewith.

ORDER OF RECOMMENDATION NO. 14

48. On July 25, 1958, the Board of Monitors issued Order of Recommendation No. 14, a copy of which was received in evidence as Monitors' Exhibit No. 14. This Order of Recommendation provides, among other things, as follows:

> "The Board of Monitors, at its meeting of July 22, 1958, adopted the attached report of Price Waterhouse and Company and decided to request and recommend that you make a thorough study of it and place it on the agenda of the next meeting of the General Executive Board so that the Board of Monitors and representatives of Price Waterhouse may discuss the contents of this report with the General Executive Board.
>
> "You will note that this report calls for the establishment of records of good standing membership of each member of local unions in the International and that such record keeping is an essential prerequisite to auditing and fiscal purposes, both for the International and the local unions.
>
> "Later this afternoon, I intend to forward to you a copy of the financial report dealing with the International and, as soon as I receive it, I will have it delivered by hand to your office."

49. The Provisional General Executive Board of the Defendant International met in Washington on September 3 and September 16, 1958, subsequent to the issuance of the Order. The Defendant International and the Defendant Provisional officers did not place the Price Waterhouse report on the agenda of the Provisional General Executive Board for the meetings of September 3 or September 16, 1958.

50. The Court further finds that Price Waterhouse made certain preliminary recommendations to the Board of Monitors with regard to the desirability of maintaining authoritative membership records at International headquarters. The Board of Monitors, in its Report to the Court filed on August 5, 1958, on page 143 of that Report (Defendants' Exhibit No. 1), quoted the recommendation of Price Waterhouse:

> "Complete authoritative records of membership or of members in good standing are not maintained at the International Union headquarters, nor have the reporting requirements of Article X and Article XXII been complied with completely by the local unions. Officials of the International Union have not insisted that the number of members in good standing be reported monthly to the General Secretary-Treasurer. Such information is requested on the reverse side of the International Union's standard remittance statement, but the data reported are not reviewed for accuracy or completeness, and they are not incorporated into the formal records in the office of the International Union. The quarterly list of names and addresses submitted under the requirements of Article XXII and received in Washington are turned over directly to the printer, Ransdell Press, Inc. They are used only for purposes of maintaining a mailing list. Steps are not taken at the International Union headquarters to ascertain that such lists are being consistently received from locals as required under the Constitution, and steps are not taken to correlate the number of names in the printer's mailing list with the number of members in good standing reported or required to be reported on the reverse side of the monthly remittance statements. Important among the consequences of this admission to maintain membership records are (a) inability of the International Union's offices to know what the per capita tax collection should be even though they know what the collections have been, and

> (b) inability of the International Union or its Credential Committees independently to endorse or contest the eligibility of convention delegates and candidates of these offices. The second of these two consequences is of direct interest to the Board of Monitors because it is the specific duty of the Board to counsel with the Credentials Committee when the eligibility of convention delegates is next under consideration."

51. The Court further finds with respect to Order of Recommendation No. 14 that the report of Price Waterhouse on page 143 of Defendants' Exhibit No. 1 further states the reasons why good standing membership should be maintained on an up-to-date basis in the Washington office of the International and that it would enable the International to do the following things:

> 1. They would be the means by which the International Union would maintain financial control over per capita tax receivable and received from the local unions. The per capita tax is the main source of revenue for the International Union, and it is, therefore, as important to control the amounts which should be collected as it is to account faithfully for the amounts which actually are received.
>
> 2. They would be the means by which the International Union would maintain financial control over per capita tax payable and per capita tax paid to the area conferences both by the International Union and by the local unions. (1957 Constitution, Article X, Section 3(d)).
>
> 3. They would be the means by which the International Union would maintain financial control over dues payable and dues paid to the joint councils by the local unions. (1957 Constitution, Article XV, Section 3).
>
> 4. The records would provide a basis for controlling the payment of lock-out and strike benefits to members in good standing by the International Union and the locals. It is at least as important to know that no unauthorized payments can be made without detection as it is to account faithfully for the payments that actually are made.
>
> 5. The records would provide the means by which the Committee on Credentials could carry out its obligation of certifying the good standing status of delegates to conventions. Complete authoritative membership records maintained by the International Union would strengthen the Committee on Credentials by

enabling it to make independent determinations and by making those determinations auditable.

6. The records would provide the means of establishing that a candidate for office had been a member in continuous good standing for a period of two years and that he meets the other requirements of eligibility to hold elective union office.

7. The records could be used to assist in settling disputes or questions regarding a member's right to vote or the other privileges which exist if a member is unsuspended in his local union.

8. The records could be used to control the mailing of the official journal of the Teamsters Union, and other communications.

We believe the existing disadvantages outlined above may readily be overcome by the maintenance of a system of complete membership records which always will show, among other things, whether or not the members are in good standing. If such a system is well conceived and properly maintained, the information taken from it from time to time as necessary should be sufficient to provide with regard to revenues and membership the financial controls, the eligibility controls and the other assurances required to show that the Union is conducting its affairs in a responsible fashion, or conversely if it should be the case, to show the manner in which propriety has been breached.

We have concluded from our discussions and study of the problem that complete authoritative membership records must be maintained by the local unions and that the fiduciary functions of the International Union cannot be adequately performed nor its supervisory responsibilities adequately discharged, unless a complete authoritative controlling membership record is maintained by the International Union. The record maintained by the International Union would be dependent, of course, in that it would contain only the information reported by the local unions. It would be independent in that the information would be checked against authoritative supporting documents and independently accumulated and preserved.

We believe that, as a minimum, the following information should be recorded by the International Union for each member:

1. Name and Address
2. Local union number
3. Member's ledger card number at local union
4. Social security number
5. Date initiated
6. Description of craft

7. Current status including historical dates as to transfers between locals, withdrawal cards and suspensions.

This information for present members is or should be available from the local union records (individual ledger cards for each member). Each local is required under the Constitution to keep the International Bookkeeping System which includes an individual ledger record of each initiated member.

All information concerning additions to and withdrawals from the membership lists must, of course, originate in the local unions and they must also supply the documentation, if any is required.

We have seen that the basic condition necessary to members' good standing status is current payment of dues in advance. Inasmuch as dues are collected at the local union level and per capita tax payments to the International Union flow from that source, it follows that information pertinent to the matter of members' good standing also must flow from that source.

The basic documents for such reporting have already been developed by the International Union in the form of the remittance statement. For the present we would suggest only minor revisions to the form to require that lists of names and addresses accompany the remittance statement in support of the monthly membership changes. We also would suggest for the present that a short schedule be added at the bottom of the statement to reconcile the reported number of members in good standing with the amount of per capita tax remitted with the statement. The need for a reconciliation occurs, for example, when members pay dues in advance.

Before the reporting may begin to be incorporated in membership records at the International Union, however, it is necessary to establish a starting point by developing a list of members (or a set of membership record cards) for each local union. An accurate listing (or set of cards) should be compiled from the records of each local union to show the information specified in items 1 to 7 above and, of course, to show which members are and which members are not in good standing.

Each such list (or set of cards) when received at the International Union will become the starting point for the Washington office membership record of the local which supplied the list (or cards). Finally there would be one for each local.

As a control over the lists (or cards), there should be a formalized summary for each

> local, another for each area conference, another for each joint council and another for the over-all membership, each one showing the starting-point totals classified as to status. Subsequent changes in membership and in status should be entered on the formalized summaries when and as they are reported by the local unions, and the corresponding adjustments should be made in the detailed lists (or card files). There should be periodic double-checks, of course, to give assurance that the details always agree with and support the controls.

52. The Court sets forth this excerpt from the Price Waterhouse report to the Monitors to show the reasonable grounds of the Board of Monitors' Orders and the necessity and urgency of the General Executive Board to meet to discuss this important auditing matter with the Monitors and representatives of Price Waterhouse.

53. The Court finds that Price Waterhouse has not made any specific or definite recommendation as to any particular type or kind of reporting or record-keeping system. Price Waterhouse states, in Defendants' Exhibit No. 1, on page 149, filed with the Court:

> "There are many ways of maintaining a record at the International Union headquarters and of correlating it with the records kept by the locals. We are not now in a position to recommend a particular new system, mechanical, electronic, or other, as being the best system available in the circumstances. However, we would be pleased to consult with the officials of the International Union to study the technicalities of the problem, and to make appropriate recommendations, if the International Union should wish to undertake the task."

The Court has considered the report of Price Waterhouse contained in the Defendants' Exhibit No. 1, beginning on pages 141 through 149, excerpts of which the Court has placed in this finding and previous Finding of Fact No. 51. The Court finds that Order of Recommendation No. 14 of the Board of Monitors requesting an early meeting with the General Executive Board to discuss the report of Price Waterhouse dealing with the maintaining of good standing membership records in the International Union was reasonable and carried out the basic purposes of the Consent Order, more particularly Section 11, placing a duty upon the Board of Monitors to counsel with the General Executive Board to the end that proper auditing and financial records and controls would be established. The Defendant International Union has failed to place this matter on the agenda of the General Executive Board at its meetings of September 3 and 16 although they had ample notice to do so.

54. The evidence further discloses that the International Union has established with the National Cash Register Company a particular type of a National Cash Register machine that was specifically designed for Teamster local unions and that approximately 400 Teamster local unions have these machines. The evidence disclosed that this machine was not designed to cover the reporting of local unions in accordance with the provisions of Article XXII, Sections 10, 11, 12, 13 of the Constitution. That these machines record the ledger card number of the individual and the amount of cash dues or initiation fee that is paid and were designed for local union auditing purposes only; that the machine was not designed to transmit any records recorded in the machine to the International Headquarters but was designed only to record the payment of dues, initiation fees and other payments in local unions. The total amount of money registered on the machine can be transmitted on the monthly report. The representative of National Cash Register testified that he did not intend to design the machine with the idea of making any reports to the International Union, which is the subject of the Price Waterhouse Report and findings.

ORDER OF RECOMMENDATION NO. 16

55. In early 1958, Defendant Provisional Seventh Vice President Brennan invoked the Fifth Amendment before the Senate Select Committee when he was asked about (a) the payment from welfare funds to a boxer by the name of Embrel Davidson, whom Defendant Brennan was managing as a business associate of Defendant Hoffa; (b) Brennan's association or connection with the Test Fleet Company, a trucking company which was formed under the maiden names of the wives of Defendants Brennan and Hoffa, by an official of Commercial Carriers. That this company was formed shortly after Defendant Hoffa intervened and settled a Teamsters' strike with Commercial Carriers; (c) the gambling activities of Defendant Hoffa; and (d) Defendant Brennan's association with gangsters and criminals.

56. On August 15, 1958, the Board of Monitors issued Order of Recommendation No. 16 which provides, in substance, as follows:

> The Board of Monitors has made a careful analysis and thorough study of the testimony given before the Senate Select Committee on August 6-7, 1958, concerning Mr. Owen B. Brennan, 7th Vice-President.
>
> It appears that in 1952 Mr. Brennan obtained a $75 per week job for Mr. Embrel Davidson, a boxer whom he was managing, as claims investigator for the Michigan Conference of Teamsters Welfare Fund. Mr. Davidson received checks from the fund from 1952 to 1954 when Vice-President Brennan ceased to manage him. Further the evidence disclosed that Mr. Davidson never did any work as a claims investigator. Vice-President Brennan declined, on the basis of the Fifth Amendment, to answer any questions concerning his relationship with Mr. Davidson.
>
> Vice-President Brennan also declined, on the basis of the Fifth Amendment, to answer any questions regarding:
>
> (a) His connection with Test Fleet Co., a corporation formed in the maiden names of the wives of Vice-President Brennan and General President Hoffa, by officials of Commercial

Carriers shortly after General President Hoffa intervened and settled a Teamster strike against Commercial Carriers;

(b) His association with General President Hoffa in certain gambling activities; and

(c) His association with gangsters and criminals.

Accordingly, the Board of Monitors recommends that General Secretary-Treasurer English take the following action by August 25, 1958:

1. File charges with the General Executive Board against Vice-President Brennan for expulsion from membership, in accordance with the provisions of Article XVIII, Section 3(d) of the International Constitution on the grounds of misappropriation, and on the grounds that he has violated his oath of loyalty and his oath of office, that he has engaged in conduct unbecoming a member and activities which tend to bring the Union into disrepute, and that he has committed acts which are inconsistent with the duties, obligations and fealty to members of the Union and which violate sound trade union principles.

2. Request Vice-President Brennan to take a leave of absence, without payment of salary, from his position as International Vice-President until a final decision has been made on the charges.

3. Instruct Price Waterhouse & Co. to audit the records of the Michigan Conference Welfare Fund for the period during which payments were made to Mr. Davidson. This is necessary and imperative in order to determine the amount of money paid to Mr. Davidson, so as to establish definitely the amount of money that General President Hoffa and Vice-President Brennan must pay back to the Welfare Fund.

4. Arrange for a thorough investigation of the charges against Vice-President Brennan.

5. Notify the Executive Board of Local Union 332, Detroit, Michigan, of these facts and the action being taken by the International Union and recommend that consideration be given to instituting proceedings to remove Mr. Brennan from his office as President of the Local.

The Board of Monitors also recommends that, inasmuch as General President James R. Hoffa was a business associate of Vice-President Brennan in managing Mr. Davidson, General President Hoffa, by August 25, 1958, should disqualify himself from any participation, direct or indirect, in the filing and investigation of the charges against Vice-President Brennan and in the conduct of the hearings concerning them.

Member Wells dissents from the issuance of this Order of Recommendation for the reasons expressed in his attached memorandum.

57. On August 18, 1958, in a letter to Defendant Provisional General Secretary-Treasurer English, and on August 21, 1958, in Supplemental Order to Order of Recommendation No. 16, a copy of which has been received as Exhibit 2, the Monitors recommended that outside counsel be retained to advise in the preparation of the charges and the evaluation of the evidence in the presentation of the case against Vice President Brennan. The Board of Monitors recommended that one of the three following attorneys be employed: Abe Murdock, Guy Farmer, Chairman and former member of the National Labor Relations Board, or Frank J. Dugan, Dean, Georgetown University Law School.

58. A constitutional quibble was raised by Defendant Provisional Secretary-Treasurer English in a letter dated August 20, 1958 (Monitors' Exhibit No. 36, R. 150), with respect to his authority to file the charges, and in a letter dated August 26, 1958, constitutional objections with respect to hiring outside counsel were raised by the Defendants' General Counsel (Monitors Exhibit No. 38, R. 154).

59. In the Supplemental Order to Order of Recommendation No. 16 dated August 21, 1958, and a letter dated September 3, 1958 (Monitors' Exhibit No. 39, R. 155), the Monitors disposed of all constitutional objections and adopted the Defendant Provisional General Secretary-Treasurer's suggestion that the Defendant Provisional First Vice President be recognized as an appropriate charging party.

60. Two months after the issuance of the Board's original recommendations and after the petition in this case, involving this Order of Recommendation, had been referred to the Court, the Defendant Provisional General President stated in a letter dated October 17, 1958, that the Defendant

Provisional General Secretary-Treasurer and the Defendant Provisional First Vice President were unwilling to file charges against Brennan but that the Defendant Provisional General President would do so if the Monitors would withdraw their recommendation concerning special outside counsel.

61. The Court finds that the Defendant International Union through the provisional officers, General President Hoffa, Vice President Conlin and General Secretary-Treasurer English, have unreasonably and in bad faith refused to carry out the provisions of Order of Recommendation No. 16 by refusing to order the suspension of Vice President Brennan, pending the filing of charges and conducting of a hearing on expulsion from membership in the International, as provided in the Order of Recommendation; by refusing to order the local union trustees, who are members of a local Teamsters union, of the Michigan State Conference of Welfare Funds to permit and conduct an audit of the books and records of the Welfare Funds of the Michigan State Conference; by refusing to notify the Executive Board of Local Union 332 of the facts and actions taken by the International and recommend that consideration be given to institution of removal of Mr. Brennan from office as president of the local union.

62. The Court finds that Provisional General President Hoffa, being a business associate of Vice President Brennan and having so testified before the Senate Select Committee that he was an associate of Mr. Brennan in managing this boxer and admitting under oath that he would pay back one-half of the money taken from the Welfare Fund to pay the salary of the boxer, Embrel Davidson, should and must disqualify himself from any participation "direct or indirect" in the filing and investigation of the charges against Vice President Brennan and in the conduct of the hearings concerning them, as is set forth in the Order of Recommendation of

the Board of Monitors. The Court further finds that the Supplemental Order to Order of Recommendation No. 16, ordering General Secretary-Treasurer English or First Vice President Conlin to employ outside counsel, either to advise or assist in preparing the charges against Vice President Brennan, was reasonable and prudent in view of the fact that General President Hoffa was a business associate in this venture with Vice President Brennan and possibly may be subject to charge in this case.

63. The Court finds that the Board of Monitors, under the Consent Decree, are authorized and empowered to issue such Orders of Recommendation in order that they may carry out the provisions and the spirit of the Consent Decree to rid the International of corruption and wrongdoing on the part of local union and International officers who breach their oath of obligation to the membership and to the local and International Union.

64. The provisions of Order of Recommendation No. 16 and the Supplemental Order thereto were reasonable and relevant to the basic purposes of the Consent Order and the Defendants, after first delaying, have refused in good faith, to comply therewith.

ORDER OF RECOMMENDATION NO. 17

65. On August 15, 1958, the Board of Monitors issued Order of Recommendation No. 17 which provided as follows:

> Solomon J. Freedman, a food purveyor of Philadelphia, testified before the Senate Select Committee on April 22, 1958 that Samuel Feldman, Business Agent of Local Union 929, requested Freedman to inform Horn & Hardart that for the sum of $50,000 Feldman would settle a labor dispute between Horn & Hardart and various local unions, including Teamster Local 107. Mr. Hanlon, Assistant to the President of Horn & Hardart testified that he was contacted by Mr. Freedman but that he refused to have anything to do with

the proposal. Invoking the Fifth Amendment, Mr. Feldman refused to answer any questions concerning this matter.

The records of the Senate Select Committee reveal that Mr. Feldman has had six convictions for crimes, including conspiracy, carrying burglary tools, attempted grand larceny, burglary, shop lifting and robbery. At the present time he is under indictment for transporting stolen bonds in interstate commerce.

The Board of Monitors, therefore, recommends to General President James R. Hoffa that the following actions be taken:

1. By August 25, 1958 charges should be filed by the General President against Samuel Feldman for expulsion from membership under the provisions of Article XVIII, Section 10 and Section 13(c) of the International Constitution.

2. A hearing on the charges should be conducted by September 10, 1958.

3. By August 25, 1958 General President Hoffa should suspend Samuel Feldman from his position in Local Union 929, and file a copy of the Order of Suspension with the Board of Monitors.

4. General President Hoffa should cause an investigation of the allegations made at the hearing of the Senate Select Committee on August 8, 1958 regarding Mr. Feldman's activities in the organization of an independent union of the employees of the Dewey Restaurant Chain in Philadelphia. It is requested that the General President submit to the Board of Monitors a report on this investigation.

Member Wells dissents from the issuance of this Order of Recommendation for the reasons expressed in his memorandum attached to Order of Recommendation No. 16.

66. Although the Monitors recommended that a hearing be conducted on the charges against Feldman by September 10, 1958, the hearing was not held until October 28, 1958.

67. Defendants did not comply with the provisions of paragraph 4 of Order of Recommendation No. 17, namely, that the Provisional General President conduct an investigation on the allegation regarding Feldman's activity in the organization of an independent union for the employees of the Dewey Restaurant Chain in Philadelphia, and more

particularly that there was a passage of money in the sum of $750 by the owner of the restaurant chain to Feldman. The Board of Monitors further requested a report on this matter to be submitted to the Monitors. The Defendant Provisional General President failed and refused to carry out this request or Order of Recommendation of the Monitors.

68. The provisions of Order of Recommendation No. 17 were reasonable and relevant to the basic purposes of the Consent Order and the Defendants did not in good faith comply fully therewith.

JOINT COUNCIL 13 ELECTION APPEAL

69. The Court finds that the General Executive Board ruled upon the appeal of the election of officers of Joint Council 13 of St. Louis, Missouri, without the panel report being first considered and studied and recommendations made to the General Executive Board by the Board of Monitors as provided by the terms of Section I of the Consent Decree.

70. The Court finds that the Board of Monitors requested President Hoffa, at a meeting of the General Executive Board, to turn over all pending appeals to the Board of Monitors so that they could be studied and recommendations made by the Board of Monitors to the General Executive Board. The Board of Monitors were informed, with respect to the appeal concerning the validity of the election of officers of Joint Council 13, that no panel report had been filed.

71. After the Board of Monitors left the General Executive Board, the General Executive Board considered the appeal relative to the election of the officers of Joint Council 13 and denied the appeal and found the election was valid.

72. Upon learning of this matter the next morning, the Board of Monitors advised General President Hoffa

that the entire file should be given to the Board of Monitors, that the action of the General Executive Board was invalid, and that no publication of the decision of the General Executive Board should be made until the Board of Monitors had studied the file and made recommendations (See Memorandum--July 3, 1958--Board of Monitors' Exhibit No. 4). Contrary to the position of the Board of Monitors, the August issue of the Teamster Journal contained a story on page 7 of that issue to the effect that the General Executive Board had upheld the report of the special three-man panel which investigated a disputed election in Joint Council 13. The story, further, set forth the officers who were elected including Harold Gibbons, President, and stated that the "election was valid in all respects."

73. The Court finds under date of August 6, 1958, the Chairman of the Board of Monitors addressed a letter to General President Hoffa requesting General President Hoffa to print a retraction in the following issue of the Teamster regarding the publication of the action of the General Executive Board inasmuch as the Board of Monitors had not ruled upon the validity of the election or made any recommendations to the General Executive Board. That this was a breach of good faith on the part of the International in publishing the action of the General Executive Board when they had been advised that their action was improper and in violation of the Decree. (See Board of Monitors' Exhibit No. 22, R.P. 135).

74. The Teamsters monthly magazine for the month of September contained the following article:

> "The Board of Monitors has demanded that the Teamster print a retraction of its story in last month's issue on the election of Harold J. Gibbons as President of Joint Council 13. The Teamster reported that the General Executive Board had upheld the results of the election in rejecting an appeal for the losing candidates. The

> Monitors protested that they had not been notified in advance that this action would be taken and immediately announced that they were undertaking an investiga- of the election to determine if the appeal was based on valid grounds. The Monitors protested the inclusion of the news report in our last issue."

75. Although the Monitor Chairman immediately had requested a retraction by the Provisional General President be published in the September, 1958, issue of the Teamster Journal and although the Defendants' General Counsel recommended that such a retraction be printed, what was printed as above set out was not a retraction but an evasive worded notice.

ORDER OF RECOMMENDATION NO. 18

76. On August 18, 1958, the Board of Monitors issued Order of Recommendation No. 18 which, in substance, provides as follows:

> The Board of Monitors recommends to General President James R. Hoffa that all Orders of Recommendation, beginning with Order of Recommendation No. 15, be published in The International Teamster, beginning with the September 1958 issue, and that a 500-to-1000 word report of the activities of the Board of Monitors, to be prepared by the Monitors, be published in each issue.
>
> It is requested that the Board of Monitors be notified by August 22, 1958 concerning the adoption of this Order of Recommendation.

77. On August 21, the Defendant, Provisional General President, informed the Board of Monitors that the Union would comply to any reasonable degree and print the publication of the Orders of Recommendation in the September issue. The Court finds that the Board of Monitors issued Order of Recommendation No. 18 after the publication of the erroneous facts concerning the appointment of a panel to hear the trusteeship proceedings of Local 107 and after the publication of the erroneous statements with

respect to Joint Council 13 in St. Louis without the appeal having been first studied and heard and recommendations made by the Board of Monitors. The Court finds that the connecting link between the membership and the International is the monthly magazine and the Board of Monitors desired the membership to fully understand the Orders of Recommendation that were made by the Board of Monitors in accordance with the Consent Decree.

78. That the Defendant Provisional General President has had sufficient time to arrange for the publication of the Orders of Recommendation in the September issue and subsequent issues, to wit, October and November, and in bad faith has failed to carry out the request of the Monitors.

79. The Technical objections advanced by the Defendants for not publishing the Orders of Recommendation of the Board of Monitors in the September and subsequent issues are evasive and not a justifiable objection. The Court finds there was ample time and notice given to the Defendant Provisional General President to print the Orders of Recommendation of the Monitors Orders 15 to 22 in the September issue.

80. Further, although the Defendant Provisional General President expressed his readiness to have the International Union representative discuss the printing of the Board of Monitors' Orders in the October issue and, after such discussion, the Monitors' representative made it clear that the Orders of Recommendation should be published verbatim in the October issue, the Defendant International and its officers have not published the Orders of the Board of Monitors in either the October or November issues.

81. The provisions of Order of Recommendation No. 18 were reasonable and relevant to the basic purposes of the Consent Order to acquaint the membership of the

International with the Orders of Recommendation of the Board of Monitors in establishing democratic processes and carrying out the spirit and purpose of the Consent Decree. The Court finds that the printing of Orders of the Board of Monitors would inform the membership that acts of wrongdoing by local and international officers would be processed and offenders brought up on charges and the International and local unions would have the opportunity to rid themselves of corrupt influences.

82. The Court finds that instead of printing the Orders of the Board of Monitors in the October and November, 1958, issues of the "International Teamster", the Defendants launched a bitter campaign of vilifications, slander against Board of Monitors' Members O'Donoghue and Schmidt.

ORDER OF RECOMMENDATION NO. 19

83. On August 19, 1958, the Board of Monitors issued Order of Recommendation No. 19 which, in substance, provided as follows:

> The Board of Monitors recommends that General President James R. Hoffa by 5:00 p.m., August 22, 1958, assume original jurisdiction over the charges against Glenn W. Smith, President, and H.L. Boling, Secretary-Treasurer, Local Union No. 515, in accordance with the provisions of Article XVIII, Section 10, for the reasons set forth in Order of Recommendation No. 19.
>
> It is also recommended that by 5:00 p.m., Friday, August 22, 1958, the General President notify Local Union No. 515 that original jurisdiction over the charges against Mr. Smith and Mr. Boling has been assumed and that, in accordance with the provisions of Section 10(a), the jurisdiction of Local 515 with respect to the charges has ceased.

84. The Court finds that the provisions of Order of Recommendation No. 19 were reasonable and relevant to the basic purposes of the Consent Order. That certain provisions of this Order dealing with the filing of charges against Glenn W. Smith and H. W. Bolling, Secretary-Treasurer

of Local 515, were carried out by the Provisional General President.

85. The Court finds that Provisional General President Hoffa did not in good faith comply with the recommendations of the Board of Monitors that (a) he conduct a thorough investigation into the acquisition of the sum of $13,500 by Local 515 from the Southern Conference of Teamsters during June, 1951 to determine whether charges should be filed against any officers of the Southern Conference and that (b) he instruct Price Waterhouse to audit the books and records of Local 515 covering the period of time when the checks were allegedly issued to bribe a Judge of the State Courts of Tennessee in order to "fix" a criminal case involving officers and members of the local.

ORDER OF RECOMMENDATION NO. 20

86. On August 19, 1958 the Board of Monitors issued Order of Recommendation No. 20, which provides for the promulgation of certain rules of election and nomination of officers in the local unions. This order provided as follows:

> The Board of Monitors recommends that (1) General President James R. Hoffa, by August 27, 1958, promulgate for adoption by all Local Union Executive Boards the attached "Rules for the Conduct of Local Union Nomination Meetings and Election of Officers," and (2) by September 15, 1958 the Executive Boards of all Local Unions, including those under trusteeship, adopt these Rules, in accordance with the provisions of Article XXI, Section 5 of The International Constitution.
>
> It is the intention of the Board of Monitors that these rules will remain temporarily in effect, until such time as the Monitors recommend the adoption of model provisions for inclusion in local union by-laws.
>
> The Board of Monitors also recommends that by August 27, 1958 General President Hoffa appoint a committee to confer with the Monitors and their staff concerning these rules and model provisions for inclusion in local union by-laws.

> The Board of Monitors also recommends that by August 27, 1958 General President Hoffa appoint a committee to confer with the Monitors and their staff concerning these rules and model provisions for inclusion in local union by-laws.
>
> It is requested that the General President notify the Board of Monitors by August 29, 1958 concerning the promulgation of the rules and the appointment of the committee and that the General President forward to the Board by September 20, 1958 copies of letters from all Local Executive Boards concerning adoption of the rules.

87. Under Order of Recommendation No. 20 the Board of Monitors requested the Defendant Provisional General President to promulgate these temporary rules to govern the conduct of nomination meetings and the election of officers in local unions, including both trusteed locals and autonomous local unions, and to appoint a committee to meet with the Board of Monitors by August 27, 1958 to discuss these temporary rules for election.

88. The Monitors desired, and so informed the Defendant provisional officers, that the proposed temporary rules of elections were to be promulgated by August 27, 1958, and made effective on September 15, 1958, so that they could govern the elections to be held in the fall of 1958, that is in November and December of 1958, and thus insure democratically-conducted nomination meetings and elections and to give experience to the Honest Ballot Association.

89. The record discloses, and the Court so finds, that it is vitally necessary that the list of those eligible for nomination should be posted so that the membership would be fully acquainted of those members of the local union who could be nominated. The record discloses that, in certain local unions with a membership of 3,000, only 71 members were eligible for nomination. In another local union of 5,000 members, only 31 were eligible for nomination.

90. The Court finds that the Defendant Provisional General President did not appoint a committee to meet and discuss these Temporary Rules for Elections and Nominations by August 27, 1958. That the Board of Monitors did not hear anything from the Defendant International Union until September 12, on which date the Monitors received a letter from the Provisional General President dated September 10, 1958 (Monitors' Exhibit No. 60, R. 205), in which he stated that "some rules violated the International Constitution and others were unworkable". General President Hoffa stated that no action would be taken on the Monitors' request until the rules were discussed with the Provisional General Executive Board.

91. The Court finds that the Monitors were requested to meet with the General Executive Board on September 16, 1958, for the sole announced purpose of discussing a convention call. Without any advance notice, the Defendant Provisional General President launched into a long and contemptuous harangue, during which he obfuscated the issue by confusing the temporary election rules with certain other proposals that dealt with local union by-laws and insultingly demanded that the Monitors justify the constitutionality of the proposed temporary election rules.

92. The Court finds that the provisions of Order of Recommendation No. 20 dealing with the establishment of temporary rules for the nonination and election of officers in trusteed local unions and also for autonomous local unions, was reasonable and practical and relevant to the basic purposes of the Consent Order. That the Defendants did not, in good faith, comply with Order of Recommendation No. 20; that no committee was appointed by August 27, 1958, to meet and discuss these rules and regulations for the nomination and election of officers in trusteed local unions and also in autonomous local unions.

93. The bad faith refusal of the Defendants to comply with Order of Recommendation No. 20 has resulted in the conduct of the 1958 local union elections without the democratic safeguards proposed by the Monitors and as covered by the spirit and purpose of the Consent Decree, and has delayed the release of trusteed local unions to autonomy.

ORDER OF RECOMMENDATION NO. 21

94. On September 15, 1958, the Board of Monitors issued Order of Recommendation No. 21, a copy of which was received in evidence in the record as Monitors' Exhibit No. 20. This Order of Recommendation deals with the purported or alleged merger of Local 183 of Fairbanks, Alaska, with Local 959 of Anchorage, Alaska. The Board of Monitors recommended that the merger was illegal and should be declared null and void. The Order, in substance, provides as follows:

> The Board of Monitors has made a thorough study of information submitted regarding the alleged merger of Local Union No. 183, Fairbanks, Alaska, with Local Union No. 959, Anchorage, Alaska. Particular attention has been paid to the circumstances of the special meeting on December 12, 1957, at which the merger was purportedly approved by the membership of Local 183. On the basis of all the available information, including the official minutes of the meeting of December 12, 1957, and the report submitted by International Vice-President George E. Mock, the Board of Monitors reached the following conclusions.
>
> 1. No proper notice specifying the purpose of the special meeting of December 12, 1957, was given to the membership. The law is well established that a vote taken on such an important issue as dissolution or merger is void, where the members have not been sufficiently apprised beforehand that anything so far outside the ordinary business of the union is to be presented at the meeting.
>
> 2. The vital question of merger was unfairly presented to the membership by Trustee Raymond Carr; thus a truly democratic expression of opinion was prevented. The minutes reflect that approval of the merger was treated as part of, or as a prerequisite to, the request for the granting of autonomy, and that the two issues were presented for a single vote.

Although the above two ground are deemed sufficient to require setting aside the supposed merger, attention is also invited to the fact that the minutes reflect that more than seven members of Local 183 opposed the merger. Under Article XIX of the International Constitution, no local union can dissolve while there are seven dissenting members. The law generally regards the merger of one union with another as amounting essentially to a dissolution of the former. It is noted further that the International Constitution contains no express provision for merger as distinguished from dissolution.

Accordingly, the Board of Monitors recommends that General President James R. Hoffa take the following action:

1. By September 12, 1958, inform Local Unions 183 and 959, Vice-President George C. Mock, former Trustee Raymond Carr, and Chairman Einar O. Mohn of the Western Conference, that the purported approval of the merger of Local 183 with Local 959, which was given at the special meeting of December 12, 1957, has been declared null and void by the General President; that the supposed merger has been dissolved; and that Locals 183 and 959 have been restored to the status of separate local unions, with restoration of their respective funds, records, and property.

2. By September 12, 1958, revoke the removal of the trusteeship over Local 183, and order the reinstatement of a temporary trusteeship pending local elections. In view of the arbitrary acts of Raymond Carr, a new trustee should be named for Local 183 by September 10, 1958. Neither Mr. Carr nor Mr. Robert J. Dixon should be appointed as trustee.

3. By September 12, 1958, order Price Waterhouse & Company to make a certified audit of the books and records of Local 183 from January 1, 1957, to date.

4. By January 1, 1959, but no earlier than December 1, 1958, direct that Local 183 be restored to self-government, with the nomination, election, and installation of officers being followed by the removal of the trusteeship.

5. Within two days after each of the above compliance dates, notify the Board of Monitors whether there has been compliance with each recommendation.

6. By October 10, 1958, furnish the Board of Monitors, with a legal memorandum setting forth the authority under the International Constitution for ordering or upholding mergers as distinguished from dissolutions, and setting forth the criteria by which the merger of two

> locals is distinguished from the dissolution of one local coupled with the transfer of its members to another.
>
> By this Order of Recommendation the Board of Monitors expresses no opinion on the desirability of an eventual merger of Locals 183 and 959, provided authority for such a merger exists and proper democratic procedures are followed.

95. The Court finds that Local 183 of Fairbanks has been in trusteeship for the past eight years; that Local 959 of Anchorage, likewise, has been in trusteeship for a number of years.

96. That, during these eight years, Local 183 has held membership meetings monthly, engaged in collective bargaining, has its own offices and meeting halls and that, at the time of the special meeting on December 12, 1957, had approximately $20,000 in cash in bank in Fairbanks, Alaska.

97. The Court finds that one, Verschauren, was the Trustee of Local 183 and resided in Seattle, Washington. That Verschauren appointed Carr Secretary-Treasurer, of Local 183, Fairbanks, and Local 959 of Anchorage.

98. The Court finds that, without authorization from the members of Local 183 of Fairbanks, Secretary-Treasurer Carr contacted Vice President Brewster, the International Vice-President, and proposed a merger of Local 183 of Fairbanks, Alaska, with Local 959 of Anchorage, Alaska. Carr held this meeting with Vice President Brewster in November, 1957, in Seattle.

99. The Court further finds that, throughout the year 1957, the membership of Local 183 at its various monthly meetings never voted upon the question of merger. That Secretary-Treasurer Carr only attended about three monthly membership meetings of Local 183 in 1957 and that, without authority or authorization from the membership of Local 183 after the discussion with Vice President Brewster of the

proposed merger of Locals 183 and 959, Secretary-Treasurer Carr directed a letter dated December 6, 1957, to General President Beck of the International (see Defendant's Exhibit No. 72, R. 646) requesting authority to merge the two local unions, namely Locals 183 and 959.

100. The Court finds that Carr instructed Business Agent Dixon, whom Carr appointed, about December 9 to place in the Daily News Miner, a newspaper of general circulation in Fairbanks, Alaska, a notice for the calling of a special meeting of the membership of Local 183 on December 12, 1957. The Court finds that it was the custom and practice that, when any important meeting was necessary, the officers of Local 183 printed a notice of a special called meeting in the Daily News Miner.

101. The Court finds that the following notice was printed in the Daily News Miner for three days, in words as follows:

> "Notice - Special Meeting - Local 183, Thursday, December 12, 1958, 8:30 PM, Carpenters Hall, 315 Fifth Avenue. Very important. All members attend."

102. The Court further finds that Carr instructed Dixon to also post notices on the bulletin boards in the various places where the members worked.

103. The Court further finds there was no adequate notice given to the membership of Local 183 that there would be a vote taken at the meeting of December 12, 1957, relative to the merger of Local 183 of Fairbanks with Local 959 of Anchorage. Further, such notices, if any, that may have been posted on bulletin boards where the individual members of Local 183 worked announcing the special meeting, did not inform the members of Local 183 that there would be a vote taken at the meeting of December 12, 1957, on the question of merging with Local 959 of Anchorage.

104. No individual notices of any kind were mailed to the members of Local 183 advising them of the special meeting or setting forth the purpose of that special meeting, namely to vote on the merging of Local 183 with Local 959 of Anchorage. The Court further finds that members of Local 183 working outside the City of Fairbanks, Alaska, at various distant points were not notified or given any notice of the call of the special meeting and were not given an opportunity to be present and to vote on the proposed merger of Local 183 with Local 959 of Anchorage.

105. The Court finds that the minutes of the meeting of December 12, 1957, of Local 183, Fairbanks (Defendants' Exhibit No. 69), reveals that the question of merger was not presented to the membership to vote upon as a single clear-cut issue but that the question of merger was unfairly presented to the membership. The minutes disclose that approval of the merger was treated as a part of or as a prerequisite to the granting of autonomy and the two issues were presented for a single vote. The minutes contain the following entry on this fact:

> "Bro. Bob Talbot made the motion which was seconded by Bro. Poorman, as follows: I move that Local #183 Fairbanks, and Local #959 Anchorage be consolidated into one Local to be known as Local #959 for the best interest of all members concerned and that we be given immediate autonomy.
>
> "A vote was called for, 114 in favor and 12 against (5 not voting as the 5 new members did not understand what it was about)."

106. The Court further finds that Fairbanks is approximately four hundred miles north of Anchorage, Alaska.

107. The Court finds that the provisions of Order of Recommendation No. 21 were reasonable and relevant to the Consent Order and that the Defendants refused, in good faith, to comply with same and that the Provisional General President of the International has not complied with

this Order of Recommendation. The Court further finds that the International Constitution does not confer upon the International General President or any other officer any power to order the merger or consolidation of local unions. The Court further finds that Local 183 of Fairbanks was a trusteed local and was in trusteeship on December 12, 1957.

108. The Court further finds that, under the provisions of Order of Recommendation No. 13 (R. 94) the International provisional officers agreed with the Board of Monitors that, if the alleged merger of Local 183 and 959 was ruled illegal, the commingling of the funds, namely the $20,000 assets of Local 183 which had been taken over by Local 959, would be returned to Local 183 less the cost of the expenses of administering the affairs of Local 183 during the time of the alleged merger.

ORDER OF RECOMMENDATION NO. 23

109. On October 18, 1958, the Board of Monitors issued Order of Recommendation No. 23, a copy of which was received in evidence as Monitors' Exhibit No. 24. In substance, this Order of Recommendation provided as follows:

> Joseph Larry Carelly, William James Gow, and Joseph Sammartino have protested the ruling of the Executive Board of Local Union No. 377 that they are not eligible to run for office because their dues have not been paid on or before the first business day of each calendar month. Mr. William Presser, President of Joint Council No. 71, in his report to the General President has also noted that Mr. Carelly is not in compliance with the requirement of Article X, Section 3(c) of the 1957 International Constitution with respect to the payment of one month's dues in advance by members who are working under a checkoff agreement. Nor have Mr. Gaw or Mr. Sammartino complied with this requirement.
>
> The Monitors have given careful consideration to Mr. Presser's report and to statements of the above-named nominees and the President and Secretary-Treasurer of the Local.
>
> Reasonable notice of the 1957 International Constitution's requirement of the payment of

one month's dues in advance was not given to the members of Local 377: the members were not individually notified nor were the provisions of Article X, Section 5(c) read at the Local's meetings or posted on bulletin boards. The brief notice, captioned "Members Take Notice," which appeared in the March issue of The International Teamster, could not reasonably be considered proper notice to the 1,500,000 members of the Union. (In any event, Mr. Carelly is not on the mailing list of the magazine, and it does not appear that the two other nominees read the notice.) It is, therefore, concluded that the provisions of Article X, Section 5(c) of the 1957 International Constitution have not been properly promulgated in Local 377 and that the appropriate provisions of the 1952 Constitution should govern the eligibility of the above-named nominees.

The Monitors are in complete agreement with the interpretation of Article II, Section 4, and Article X, Section 5(c), of the 1952 Constitution, set forth by the General Counsel of the International in his April 30, 1958 letter to former Chairman Cayton to the effect that if a member has been on checkoff, he "is considered eligible if his dues were properly checked off . . . even though received late by the Local Union." It would be particularly unconscionable to adopt any other interpretation in the instant case since the monthly statements which the Local Union submits to employers at the end of each month contain the notation that "dues must be paid by the 10th of the month."

Moreover, even if there had been proper promulgation of the new Constitutional provisions, the acceptance of the members' dues from their employers by the Local without demanding the payment of one month's dues in advance, constituted a waiver of the requirement of such payment.

Accordingly, the Board of Monitors recommends that General President James R. Hoffa direct the Executive Board of Local Union No. 377 to declare Joseph Larry Carelly, William James Gaw and Joseph Sammartino eligible to run for office.

The above-named nominees have also contested the eligibility of Joseph Blumetti to run for office, on the ground that Mr. Blumetti has never worked at the craft. The Board of Monitors recommends that Mr. Blumetti be ruled eligible inasmuch as it appears that he was a Vice President of Local Union No. 410 at the time of the 1952 convention and hence in accordance with the provisions of Article II, Section 4, of the International Constitution the requirement of having worked at the craft for two years is not applicable to Mr. Blumetti.

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110. The Court finds that Joseph Carelly and William Gore and Joseph Sammartino appealed to the Board of Monitors protesting a decision of the Executive Board of Local Union 377 of Youngstown, Ohio, ruling in September, 1957, that the three members, Carelly, Gore and Sammartino, were ineligible to run for office in the local union because they were not in good standing as provided by Article X, Section 5(c), of the 1952 Constitution and Article X, Section 5(c), as amended, the 1957 Constitution.

111. The Court finds that Carelly, Gore and Sammartino for two years prior to the nominations of Local 377 held in September 1957, were employed by employers under collective bargaining agreements with Local 377 and that, by the terms and provisions of this collective bargaining agreement, their dues were checked-off by their employer and paid directly to Local 377. The Court finds that under the check-off arrangement, the employers were requested to forward dues on or before the 10th day of each month.

112. The Court finds that Carelly, Gore and Sammartino were nominated for offices at a nomination meeting of Local 377. That, after the nominations were closed, the Local Executive Board ruled that Carelly, Gore and Sammartino were ineligible and could not be nominated or run for office because their employers failed to pay their dues on or before the first day of each month and that Carelly, Gore and Sammartino had not paid one month's dues in advance as provided by the amendment made to Article X, Section 5(c), at the 1957 Convention.

113. Article X, Section 5(c), of the 1952 Constitution, Defendants' Exhibit No. 56, provides as follows:

> "All members paying dues to local unions must pay them on or before the first day of the current month in advance. Any member failing to pay his dues at such time shall not be in good standing."

Article II, Section 4, of the 1952 Constitution provided as follows:

> "Eligibility to Office: To be eligible for election to any office of a local union or the International Union, the member must be in continuous good standing for a period of two years prior to nomination to said office and must work at the craft as a member for a total period of two years."

114. The Court finds that Article X, Section 5(c), was amended at the 1957 Miami Convention and provides as follows:

> "(c) All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Where membership dues are being checked-off by the employer pursuant to properly executed check-off authorization, it shall be the obligation of the members to make one (1) payment of one month's dues in advance to insure his good standing for each consecutive month for which monthly check-off is made. Any member failing to pay his dues at such time shall not be in good standing."

115. The Court finds that the Board of Monitors ruled that Carelly, Gore and Sammartino were eligible to run for office and were in good standing within the meaning of the 1952 Constitution. The Board of Monitors found that the 1957 amendment to Section 5(c) of Article X providing for the payment of one extra month's dues in advance in order to keep a member in good standing, when the employer did not pay his dues on time was not properly promulgated to the membership of Local 377 and that no reasonable notice of the effective date or the promulgation of the amendment to the 1957 Constitution of Article X, Section 5(c), had been given to Carelly, Gore or Sammartino or the other members of Local 377. That Carelly, Gore and Sammartino had not been given notice of the 1957 amendment to Article X, Section 5(c).

116. The Board of Monitors further found that the 1957 amendment to Article X, Section 5(c) was never read at local union meetings of Local 377 nor was the amendment

posted on various bulletin boards. That the membership of Local 377 did not have an opportunity to comply with Article X, Section 5(c) of the 1957 Constitution and did not know that they had to pay one month's dues in advance when they were working on check-off in order to keep in good standing if their employer failed to pay their dues on or before the first business day of the month.

117. The Board of Monitors ruled that, because of the lack of notice of promulgation of the 1957 amendment, Article X, Section 5(c) of the 1952 Constitution controlled and applied. The General Counsel of the Defendant International construed Section 5(c), Article X, of the 1952 Constitution that an employer was the union's agent under a check-off agreement and that, if the employer failed to pay the members' dues on or before the first day of the month, the member nevertheless remained in good standing and would be eligible to run for office. The Board of Monitors agreed with the interpretation given to the 1952 Constitution by General Counsel Williams as it applied to trusteed locals and applies this interpretation to autonomous locals.

118. The Court finds that Order of Recommendation No. 23 was reasonable and relevant to the Consent Order and that the Defendant Provisional General President and the Defendant International Union refused in good faith to comply with the same and that Carelly, Gore and Sammartino were eligible to be nominated and run for office in Local Union No. 377 of Youngstown, Ohio.

119. The Court further finds that there has developed a pattern of resort to various courts in order to delay and frustrate the actions of the Monitors and to defeat the objects and purposes of the Consent Decree. The Court finds that, when Order of Recommendation No. 17 was issued on August 19, 1958, recommending the filing of charges against

Smith and Bolling, the President and Secretary-Treasurer of Local 515 of Nashville, Tennessee, for the alleged purpose of bribing of a judge, the officers of that local union immediately resorted to filing a suit in state courts of Tennessee on August 28, 1958. A temporary restraining order was obtained in the Chancery Court of the state courts of Tennessee by Smith and Bolling against the International Union based on the fact that the Monitors had recommended the filing of charges against Smith and Bolling. The complaint alleged that the Monitors had no authority or power under the Consent Decree to issue such an Order of Recommendation. See Defendants' Exhibit No. 48, decision of Trial Judge, and Monitors' Exhibit No. 62, copy of complaint. A temporary injunction was later dissolved and the Bill of Complaint dismissed by findings of the Trial Judge that the Monitors had the authority and power to issue the Order of Recommendations and, further, that the General President had the authority and power to order the suspension of Smith and Bolling because an emergency existed when the act of the attempted bribe was discovered.

120. The Court finds that, on September 2, 1958, the Monitors recommended the implementation of a prior recommendation for trusteeship proceedings under Article VI, Section 5(a), of the International Constitution against Local 107 of Philadelphia and enclosed to General President Hoffa a copy of the Price Waterhouse Report based on Order of Recommendation No. 4. On September 10, 1958, a Rule to Show Cause was issued at the instance of Raymond Cohen, Joseph Grace and other officers of Local 107 against the International. On September 22, a temporary injunction was granted against the action recommended by the Board of Monitors. This action was instituted by these local union officers in violation of the International Constitution and was based in part on allegations

that the Board of Monitors had no authority or power to recommend any trusteeship proceedings nor did they have any power or authority to recommend, under the Consent Decree, a clean-up or investigation into the financial wrong-doings of the various officers.

121. When the Consent Order was considered and agreed upon, it was believed the necessary preparation to assure that a new convention would be organized and conducted honestly without the interference or dictation or control of the International officers and to further accord democratic processes to the dues-paying members in the election or delection of delegates, could be accomplished in one year from the date of the entry of the Consent Order.

122. That the Defendant provisional officers and the Defendant International have breached their agreement with the Court and with the parties and have failed in this requirement to give cooperation and assistance to the Board of Monitors in carrying out the basic purposes of the Decree and in carrying out in good faith the orders of the Board of Monitors, and have blocked and obstructed the Monitors to achieve the necessary preparation for a convention and clean-up in the International and the locals in order to protect the democratic right of the members and subordinate bodies.

123. The failure of the Defendants to cooperate with the Monitors and to accord good faith compliance with their Orders of Recommendation has occasioned the loss of valuable time in the carrying out of the object and purposes of the Consent Order.

124. The Court further finds that, without consent of the Board of Monitors or the Court and despite a recommendation made to the General Executive Board of the International by the Monitors advising the General Executive Board that the Board of Monitors did not believe that a convention

could be had until some time in September, 1959, and in open defiance of the recommendation of the Board of Monitors, the Defendants, through the action of the General President and the General Executive Board, on September 16, 1958, authorized the General President and the General Secretary-Treasurer to issue a call for a convention and to inform the membership and the public thereof that a convention would be called some time after January 31, 1959. Shortly after the action of the General Executive Board on September 16, 1958, in issuing a call for a convention and authorizing the General President and General Secretary-Treasurer to call the convention after January 31, 1959, the Board of Monitors petitioned the Court to interpret and construe the Decree or modify the Decree to the end that no convention be called until after the Board of Monitors first would advise the General Executive Board that a convention could be had and the consent of the Court later be obtained.

125. The Court finds that, while this petition was pending before this Court as to the request of the Board of Monitors to modify the decree that no convention be called until approval of the Court be had, the Defendant International officers issued a call to the membership and advised the public that a convention would be held in the Palmer House, Chicago, from March 6-18, 1958.

126. There are changed circumstances, and the Court so finds, that necessitate a modification of the Decree with respect to the calling of a convention and the Court finds the Defendant provisional officers and the Defendant International Union have acted in bad faith, and have blocked and thwarted the efforts of the Board of Monitors and have not complied or carried out the reasonable Orders of Recommendation of the Board of Monitors, namely, Orders of Recommendation Nos. 4, 11, 12, 14, 16, 17, 18, 19, 20, 21.

127. The Court further, therefore, finds it necessary to modify and amend the Consent Order by deleting therefrom the privilege of granting the Defendant International to call a new convention after one year and inserting the following provision in Section 8:

> "The time for the convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International, with the exact time of holding the convention being subject to the final approval of the Court."

128. The Court finds the following changed circumstances that necessitate a modification of the Decree with respect to the calling and holding of a convention:

1. That the Defendants refused to cooperate and assist the Monitors to carry out the basic purposes of the Consent Decree.

2. That the Defendant provisional officers refused in bad faith to comply with the reasonable and relevant recommendations of the Monitors.

3. That the Defendant provisional officers in bad faith frustrated and thwarted the efforts of the Monitors in carrying out the basic provisions and objective of the Consent Decree.

4. That the Defendant provisional officers have breached their agreement with the Court and with the parties to the Decree by failing to carry out the necessary provisions pursuant to the calling and holding of a convention by delaying and preventing the release of trusteed locals.

5. By refusing to adopt the temporary rules of election for Local 245 in Springfield, Missouri, under the provisions of Order of Recommendation No. 4.

6. By refusing to promulgate and put into effect temporary rules for elections in trusteed

and autonomous locals as set forth in Order of Recommendation No. 20.

7. By refusing to appoint a committee to discuss the temporary rules for election in trusteed and autonomous locals by August 27.

8. By failing and refusing to acknowledge acceptance of the temporary rules for election until September 10.

9. By refusing and failing to advise the Board of Monitors in the letter of September 10 of what provisions were unconstitutional or unworkable.

10. By preventing, prohibiting and denying access to the books and records of Local 245 to Price Waterhouse for auditing purposes.

11. By denying and prohibiting access to the books and records of Locals 295 and 808, New York City, to permit Price Waterhouse to audit the books and records of those local unions.

12. That the refusal of the Defendant provisional officers to order local unions to permit Price Waterhouse accountants to audit their books and records has prevented and frustrated the efforts of the Board of Monitors to establish proper auditing and proper provision as set forth by Section 5 of the Consent Decree.

13. That, in order for Price Waterhouse to establish full and complete auditing procedures for local unions and full and complete reporting and auditing procedures flowing from local unions to the International, it was necessary for Price Waterhouse to audit the books and

records of these local unions and other local unions.

14. The Court further finds that it was necessary for Price Waterhouse, in order to recommend the establishing of a manual of auditing procedures to be used uniformly by auditors in auditing local union books and other subordinate bodies, as proposed by Price Waterhouse in Defendant's Exhibit No. 1, beginning at page 79, captioned "Auditing of Local Unions" and more particularly set forth on page 80 thereof, audit local union books. Price Waterhouse recommended to the Board of Monitors to establish a Manual of Procedure for Auditors, establishing uniform standards to govern the arrangement and scope of the auditing, for local unions, joint councils or conference's books and records (see Defendant No. I). That the Monitors have not been able to carry out Section 5 of the Consent Decree because the Defendant provisional officers have blocked and prevented Price Waterhouse from auditing local union books.

15. The Court further finds that it is necessary for Price Waterhouse to audit the books of local unions in order for the Board of Monitors to establish reporting and auditing procedures that would necessarily flow from the local union to the International or from joint councils or conferences to the International.

16. The Court further finds that this auditing procedure recommended by Price Waterhouse to the Monitors with respect to auditing

trusteed local unions' books and records is necessary in order to establish cut-off dates in the trusteed local unions before that local is returned to autonomy.

17. Further, under Section 4 and Section 11 of the Consent Decree, the Board of Monitors were to write model union by-laws and also amendments to the International Constitution. The Court finds that the Board of Monitors, from the testimony adduced at the trial, intended to integrate the auditing procedures and reporting procedures recommended by Price Waterhouse and place them in the model local union by-laws and also in proposed amendments to the International Constitution. Thus, these changed circumstances completely defeat and thwart the compliance by the Board of Monitors with the necessary conditions precedent to holding a convention and these changed circumstances are brought about by the bad faith of the Defendant provisional officers in refusing to cooperate with and assist the Board of Monitors in carrying out the Consent Decree.

18. Further changed circumstances are present in the refusal and delay by the Defendant provisional officers to order charges filed against Local 107 of Philadelphia and for placing that local in trusteeship as provided in Order of Recommendation No. 4.

19. The refusal and delay in ordering Raymond Cohen, Secretary-Treasurer of Local 107, to file notice of loss under fidelity bond and failure to process, whether or not Cohen filed such notice of loss.

20. Refusal and delay in ordering the filing of charges against Vice President Brennan.

21. The refusal and delay in appointing special counsel to prepare the charges against Vice President Brennan and gather the evidence for presentation to the General Executive Board, as provided by Supplemental Order No. 16.

22. The appointment of an Anti-Racketeering Commission to investigate corruption in local unions and in the International Union in August, 1958, as a deceptive tactic to defeat and frustrate the Board of Monitors.

23. The publication by the Defendant provisional officers in the monthly magazine, "The Teamster," printing false and inaccurate statements concerning (a) the fact that Raymond Cohen and the local executive board of Local 107 requested the appointment of a panel to hear charges on trusteeship, and (b) the approval and handling of Joint Council 13's election appeal and the refusal to retract in good faith when requested by the Board of Monitors.

24. The calling of a convention and the publication of the order for a convention when the matter was pending before the Court on the Monitors' request for modification and decision.

25. The continuing operation of the Anti-Racketeering Commission after the Board of Monitors had questioned the authority of the Defendant provisional officers to appoint such a commission under the terms of the Consent Decree.

26. The delay and refusal to investigate the Southern Conference of Teamsters loan of $13,500 to Smith and Bolling, officers of Local 515 of Nashville, when such money was alleged to have been used for payment of a bribe to a judge.

27. The refusal to direct and order Price Waterhouse to audit the books and records of Local 245.

28. The refusal to assist and cooperate with the Monitors in cleaning up corruption and wrongdoing in local unions and the International.

29. The Court finds that the Defendant provisional officers have refused to set down on the agenda of the meetings of the General Executive Board of September 3 and 16, 1958, the report of Price Waterhouse, as recommended by the Board of Monitors in Order of Recommendation No. 14.

129. The Court finds that no evidence was adduced in the record to support the contention of Defendants that Godfrey P. Schmidt should be disqualified and removed as a Monitor; that seven of the eight unsworn charges filed by Defendants against the said Godfrey P. Schmidt were withdrawn by Defendants during the trial herein and the remaining charge of "conflict of interest", although pressed by Defendants, was and is unproved on the record; that it was evident that, in view of Mr. Schmidt's written and sworn answer to and refutation of the said charges, the withdrawal by Defendants was made because Defendants had no evidence to support them; and that all of the said charges are in all respects unproved on the record.

CONCLUSIONS OF LAW

The Court makes the following Conclusions of Law:

1. The Consent Decree entered in this case on January 31, 1958, is an interlocutory decree and is not a final settlement of any of the essential issues in the case.

2. The Consent Decree, being interlocutory, is at all times within the control of the Court and, as an interlocutory decree, may be modified, revised or amended in the further discretion of the Court in order to effectuate its basic purposes.

3. The Court further rules that, as a matter of law, the Consent Decree is of such a nature that it is subject to modification because it involves supervision of a change of conduct or conditions which are provisional and tentative and, therefore, subject to modification and revision. This Consent Decree does not determine fully accrued rights or property rights which are permanent and are not subject to change.

4. The Consent Decree is a judicial decree, a judicial act, and subject to the inherent powers of the Court to modify the decree to carry out the basic purposes.

5. The Court has the inherent power to construe or interpret the Consent Decree. The Decree is to be interpreted with reference to the issues it was made to decide and the specific provisions of the Decree must be read in light of its general purposes. Further, the objects and purposes sought to be remedied by the Consent Decree must be construed and interpreted in light of the issues raised by the pleadings and the issues developed during the twenty-two days of hearing on the merits.

6. Properly construed and interpreted, the Consent Decree permitted the individual Defendants provisionally to assume office; that the permission to assume office was

temporary and was granted in view of known existing conditions and upon the assumption by the individual Defendants of the obligation to assist and cooperate with the Monitors in effectuating the basic purposes of the Consent Decree.

7. The powers of the Monitors are not to be construed by a literal reading of the provisions of the Consent Decree. These powers are to be construed and interpreted in the light of the issues raised by the pleadings in the case and in light of the objects and purposes sought to be remedied by the pleadings.

8. The powers of the Board of Monitors under the Consent Decree were not limited but included all proper efforts on the part of the Board of Monitors to effectuate the basic purposes and objects of the Consent Decree.

9. The Monitors are officers of the Court and their powers are not limited by a grant of express powers. The Board of Monitors have all powers reasonably necessary to effect the basic purpose of the Order and those powers not expressly granted are implied and available to the Board of Monitors and, where changed circumstances exist, the inherent powers of the Court are at the command of the Monitors to achieve the basic purposes necessary to effectuate the end object of the Consent Decree.

10. Properly construed and interpreted, the Consent Order places the duty and responsibility upon the Board of Monitors to issue Orders of Recommendation to the Defendant provisional officers that are reasonable and relevant to the basic purposes of the Consent Decree.

11. The Court concludes, as a matter of law, under the Consent Decree that the duties and responsibility of the Monitors are not merely advisory or recommendatory, that the Defendant provisional officers are to comply with all orders of recommendation of the Board of Monitors which are reasonable

and relevant to the purposes of the Consent Decree and, in good faith, to cooperate with the Monitors to carry out the purposes expressed in such Consent Decree.

12. Properly construed and interpreted, under the Consent Decree the Defendant provisional officers cannot ignore the orders of recommendation issued by the Monitors or, by silence and conduct which amounts to unspoken rejection, refuse to comply with the orders of recommendation of the Monitors; that the Defendant provisional officers and the Defendant International always have available recourse to this Court to ascertain whether or not the orders of the Board of Monitors are reasonable or relevant.

13. The Court determines, as a matter of law, that the Orders of Recommendation Nos. 4, 11, 12, 14, 16, 17, 18, 19, 20, 21, and 23, as well as Supplementary Orders No. 16 and 18, are reasonable and relevant to the basic purposes of the Consent Order and are deemed to be of primary importance in the work of the Monitors.

14. The Court concludes, as a matter of law, that the recommendations of the Board of Monitors in Order of Recommendation No. 4 that a public member be placed on the panel to hear the charges for placing Local 107 of Philadelphia, Pennsylvania, under trusteeship were consistent with Article VI, Section 5(a), and consistent with the customary and historical interpretation and construction given to that provision by the International. Section 5(a) provides:

> "In the case of all hearings conducted pursuant to or after the establishment of trusteeship, the General President shall designate a panel comprised of at least one (1) International Union Vice President and one (1) disinterested member of the International Brotherhood of Teamsters from the area involved."

That the International Union has consistently interpreted this section to permit an outside individual, like house counsel, International economist and others, to serve on the panel to hear trusteeship proceedings.

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15. The Court finds, as a matter of law, that the notice for the calling of the special meeting by Secretary-Treasurer Carr of Local 183 on December 12, 1957, was not specific in spelling out the purpose of allegedly voting on a merger. That the notice published in the Daily News Miner did not specifically set forth the purpose for which the special meeting was called.

16. The Court interprets and construes Article X, Section 5(c), of the 1952 Constitution that, where an employer under an agreement with a Teamster local union checks off the dues of an employee-member and thereafter delays paying the member's dues on time (that is on or before the first day of the month) and such delay is occasioned through no fault of the union member, the local union should not rule that the member is delinquent and not in good standing. That, as a matter of law, the check-off agreement is for the benefit of the local union and the employer is the agent of the union and the member of the union is not delinquent in the payment of dues within the meaning of Article X, Section 5(c), of the 1952 Constitution. That dues, when checked off by the employer under an agreement with the union, are paid to the union as of the date of the check-off and the employer is responsible, as the agent of the local union, for the payment of the dues to the local union in a timely and prompt manner.

17. The Court rules, as a matter of law, that the amendment made at the 1957 Miami convention to Article X, Section 5(c), has not been properly promulgated nor has sufficient notice been given to the members of the International of the effective date of this amendment. That, as a matter of law, the amendment to the International Constitution became effective as of the date of its passage. That, by virtue of the temporary injunction entered into by this

Court on October 31, 1957, the 1957 amendment to Article X, Section 5(c), was enjoined from enforcement. That the amendment became effective by the entering of the Consent Decree by this Court on January 31, 1958. That no prospective date was set for the effective date of this amendment and that members of the International on check-off were immediately delinquent in the payment of dues on February 1 and March 1 under the 1957 amendment. That the operative effect of the amendment, without proper promulgation and reasonable notice to the membership, disqualified and penalized members and there was a lack of notice and lack of due process. That the operative effect and enforcement of the 1957 amendment was discriminatory and, therefore, contrary to public policy.

18. The Court concludes, as a matter of law, that, under Section 5 of the Consent Decree, the Board of Monitors had authority to order an audit of the books and records of Local Unions 245, 808 and 295. Further, the Court finds, as a matter of law, that there was ample constitutional authority under Article X, Sections 11(a), (b), (c), (d) and (e) of the 1957 provisional International Constitution for the Defendant Provisional General President to issue orders to Local Unions 245, 295 and 808 that the books and records of these local unions be audited by Price Waterhouse, as provided by Orders of Recommendation Nos. 11 and 12.

19. The proof submitted by the Board of Monitors and the Petitioners sustained the necessary burden of proof of the facts warranting the changed circumstances for the Court to modify the injunction. The Court concludes, as a matter of law, that the Defendant International Union and the Defendant provisional officers, in disregard of their assumed obligations to make good faith effort to pave the way for a new convention by cooperating with the Board of Monitors, have not complied in good faith with the reasonable and

relevant orders of the Board of Monitors in making the preparations for the new convention but have embarked on a course of action to block and frustrate the efforts of the Board of Monitors to effectuate the progress of the Decree. The Court concludes, as a matter of law, that the very essence of the consideration upon which the time arrangement was rested and placed in Section 8 of the Decree, namely the period of one year from the date of the entry of the Consent Decree for the calling of a new convention, has been completely destroyed and breached by the Defendant provisional officers.

20. The Court condludes, as a matter of law, that the attempt by the Defendant provisional officers to call a new convention is null and void and that the Defendant provisional officers must rectify such conduct and give appropriate notice to the membership that the convention will not be held as announced.

21. The Court concludes, as a matter of law, that the changed circumstances that have arisen and continued since the entering of the Decree necessitates a modification of the Decree with respect to the calling of a convention. The Court finds that the modification of the Consent Decree, as requested by the Board of Monitors and Plaintiffs, is necessary and proper. The Court, therefore, concludes, as a matter of law, that it is necessary to modify and amend the Consent Decree by deleting therefrom the privilege granted to the Defendant International to call a new convention after one year and inserting the following provision in Section 8:

> "The time for the convention shall be subject to the recommendation by the Board of Monitors to the General Executive Board of the International, with the exact time of holding the convention being subject to the final approval of the Court."

22. The Court concludes, as a matter of law, that Rule 23(c) of the Federal Rules of Civil Procedure has no

applicability to the facts of this case because the rule is not applicable inasmuch as the Consent Order is not a final settlement of any essential issue but is interlocutory in nature. That the Defendants are only provisional or temporary officers and the final issue as to the right of the Defendants to hold office has never been determined. That the Consent Order is procedural and within the control of the Court.

23. That the charges for removal from office by the Defendants against Monitor Godfrey P. Schmidt are hereby dismissed on the grounds that no evidence has been adduced whatever with respect to seven of the charges and that, on the charge based upon so-called conflict of interest, the Court concludes, as a matter of law, that the evidence is not sufficient to sustain such charge and that the eight charges against Monitor Godfrey P. Schmidt are hereby dismissed.

F. Dickinson Letts
Chief Judge, United States
District Court for the
District of Columbia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

JOHN CUNNINGHAM, ET AL., Plaintiffs v. JOHN F. ENGLISH, ET AL., Defendants	)	Civil Action No. 2361-57

ORDER OF THE COURT CONSTRUING AND MODIFYING CONSENT DECREE

Upon consideration of the Findings of Fact and Conclusions of Law made this ____________ day of January, 1959, it is hereby

1. ORDERED, that the Defendant provisional officers and the Defendant International shall comply promptly and fully with the Board of Monitors' Orders of Recommendation No. 4, No. 11, No. 12, No. 14, No. 16, No. 17, No. 18, No. 19, No. 20, No. 21 and No. 23, and the Supplemental Orders to No. 16 and No. 19.

2. ORDERED, that the Defendant provisional officers and the Defendant International shall cooperate and assist the Monitors in accomplishing the basic purposes and various provisions of the Consent Decree and, in fulfilling their obligation to assist and cooperate in good faith with the Monitors, the Defendant provisional officers and the Defendant International shall comply promptly and fully with all future Board of Monitors' Orders of Recommendation that are reasonable and relevant to the basic purposes of the Consent Decree.

3. ORDERED, that Section 8 of the Consent Decree is modified and that the first two sentences of the second paragraph are deleted therefrom and the following provision is inserted in their place:

> "The time for the next convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International Brotherhood, with the exact time of holding the convention being subject to the final approval of the Court."

4. ORDERED, that the convention call by the Defendant provisional officers and Defendant International on September 16, 1958,

is null and void.

5. **ORDERED**, that the Defendant provisional officers and the Defendant International Union shall advise all local unions and other subordinate bodies that the call for a convention in the City of Chicago, March 15-19, 1959, is null and void. That all local unions and other subordinate bodies shall be notified that said convention shall not be held. Further, that the Defendant provisional officers and the Defendant International shall have a notice read at all February local union meetings and published in the February issue of The International Teamster to the effect that the authorization of a convention call has been declared null and void by the Court and that the next convention will not be held as previously announced by the Defendants.

6. **ORDERED**, that the Defendant provisional officers and the Defendant International shall adopt and apply the interpretations of the provisions of Article X, Section 5(c), of the 1952 International Constitution and the 1957 amendment thereto, as set forth in Conclusions of Law Nos. 16 and 17.

7. **ORDERED**, that the Defendant provisional officers and the Defendant International Teamsters Union shall give the membership of the International Union, at least three (3) months' notice of the effective date of the 1957 amendment to Article X, Section 5(c) and shall notify the members that the 1957 amendment will become effective on May 1st, 1959, and the Defendants shall have such notice, together with the full text of Article X, Section 5(c), and an explanation thereof, which shall be subject to approval by the Monitors (a) published in the February, March and April, 1959 issues of The International Teamster, (b) read at the February, March and April, 1959, local union general membership and divisional meetings, and (c) posted during the months of February, March and April, 1959, on all bulletin boards where local union notices are customarily posted.

8. **ORDERED**, that the Defendant provisional officers and

the Defendant International shall have a notice read at all February local union meetings and published in the February issue of The International Teamster to the effect that the Court has found that the Defendant International has presented no evidence to support its motion to disqualify and remove Godfrey P. Schmidt, Esquire, as a Monitor, and this motion was wholly without merit.

~~9. ORDERED, that the Defendant provisional officers and Defendant International shall publish in the February issue of The International Teamster the Court's Memorandum Opinion of December 11, 1958, the Court's Findings of Fact and Conclusions of Law, of January __________, 1959, and this Order.~~

____

F. Dickinson Letts,
Chief Judge, United States
District Court for the
District of Columbia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN CUNNINGHAM, et al.
Plaintiffs,
vs.
JOHN F. ENGLISH, et al.
Defendants.

Civil Action No. 2361-57

MOTION BY JOHN CUNNINGHAM TO VACATE CONSENT ORDER OR TO VACATE ORDER CONSTRUING AND MODIFYING CONSENT ORDER OR TO STAY ORDER OF COURT PENDING APPEAL

The plaintiff, JOHN CUNNINGHAM, by his attorneys, moves the Court to vacate a certain Consent Order entered herein on the 31st day of January, 1958, or, to vacate a certain order of construction and modification entered herein on the 9th day of February, 1959, or, in the alternative, to stay the effect of such order of February 9, 1959, pending an appeal in this cause, and for grounds therefor states:

1. That the Court is without jurisdiction to enter an order creating a Board of Monitors, and such jurisdiction cannot be conferred by the consent of the parties to the action.

2. That although the plaintiff JOHN CUNNINGHAM gave his apparent consent to the said Consent Order of January 31, 1958, such apparent consent was not a real or actual consent for the reason that it was given under the mistaken belief of fact, based upon assurances given to him as a layman by his then attorney of record, GODFREY P. SCHMIDT, that the powers of the so-called Board of Monitors were limited to the right to give advice and make recommendations to the General Executive Board of the International Brotherhood of Teamsters, whereas it now appears to be factually true under the Court's construction of the said Consent Order that the powers then given were absolute and mandatory in character; that such mistake of fact aforesaid was a mutual mistake, the defendants in said cause believing that the

powers of the Board of Monitors were limited to advisory powers, all as will more particularly appear by reference to the several pleadings now remaining on file in the files and records of this cause; that such mistake of fact was therefore mutual and material, did exist at the time the plaintiff JOHN CUNNINGHAM entered into the Consent Decree, and but for the said mutual mistake of fact aforesaid, the plaintiff JOHN CUNNINGHAM would not have consented to the entry of such Consent Decree.

3. That although the Consent Order entered by this Court on January 31, 1958, was calculated and intended to create a Board of Monitors whose powers were advisory and recommendatory only, this Court by an order dated February 9, 1959, has ordered a construction and modification of such Consent Order granting such Monitors broad and expansive mandatory powers. Such order of February 9, 1959, so construing the Consent Order of January 31, 1958, is invalid inasmuch as the Court can only construe or modify said Consent Order in a manner consistent with the basic purposes thereof and cannot construe or modify such order in any such manner calculated to thwart such basic purposes. It was never intended that the Board of Monitors have the broad and expansive powers now granted them by the Court's order of February 9, 1959, and by so construing the Consent Order the Court has by judicial fiat granted powers to them which are not expressed explicitly or implicitly within the four corners of that Consent Order.

4. That on the 9th day of January, 1959, the plaintiff JOHN CUNNINGHAM did cause, through his attorneys, to be filed in

this cause certain objections to the proposed findings of fact and order then pending before this Court, asserting in such objections, among other things, that he and his attorneys had been refused the right to see and examine the proposed order or findings and had further been refused the right to be heard concerning any objections he might note to such order and findings when the same had been filed and displayed to him.

That thereafter on the said 9th day of January, 1959, the objections then filed by the plaintiff JOHN CUNNINGHAM were ordered physically removed from the files of this cause, although properly filed herein, and returned to his counsel. That at said proceedings on January 9, 1959, there was no counsel present on behalf of the plaintiff, or any of the other plaintiffs in this cause, other than the counsel who had filed the written objections which were ordered removed from the file, and the plaintiff, although an original litigant in such cause, was thereby deprived of his right to representation, to be heard, and other valuable substantive rights in violation of the due process guaranteed by the Constitution of the United States of America.

5. That although request was made that the proposed order of modification and construction be displayed to the plaintiff and to his counsel, such request was refused and the plaintiff was thereby deprived of his right to object to such proposed order and to preserve his rights in this cause, notwithstanding that there has not been any counsel faithfully representing the plaintiffs, and others similarly situated herein since the rendition of the Consent Order of January 31, 1958.

6. That on the 6th day of February, 1959, there was argued in the United States Court of Appeals for the District of

previously entered on the 9th day of January, 1959, when he ordered stricken from the files certain objections filed without his consent, is precluded from effectively pursuing the preservation of his rights in this litigation.

That thereafter at a time unknown to the plaintiff JOHN CUNNINGHAM but occurring on the 9th day of February, 1959, the order to which earlier objection had been made and stricken and against the entry of which certain proceedings had been instituted was executed by the Chief Judge, the Honorable F. Dickinson Letts, and filed in the office of the Clerk of this Court.

7. The plaintiff JOHN CUNNINGHAM has, by virtue of the matters and things set forth in this motion, been prevented from asserting numerous valid objections to the order entered on the 9th day of February, 1959, and otherwise taking such steps as he in his individual capacity was compelled to take to protect his own individual rights and such other steps as he in his fiduciary capacity as Chairman of the Rank and File Committee and one of the original plaintiffs in this cause brought on behalf of himself and approximately 1,600,000 members of the International Brotherhood of Teamsters was under a legal and moral obligation to take.

8. That unless the plaintiff JOHN CUNNINGHAM is given sufficient time to prepare and file his expanded objections individually and as such fiduciary on behalf of the class he represents, numerous valuable rights possessed by him and by others similarly situated will be destroyed by the Order of this Court, said Order construing or modifying the Consent Order being challenged by the plaintiff CUNNINGHAM as improper and void.

WHEREFORE, the plaintiff JOHN CUNNINGHAM prays that an order be entered herein declaring that the Consent Decree entered in this cause on the 31st day of January, 1958, be held and declared to be null, void, and of no force and effect whatsoever and that the same be vacated; or that an order be entered herein vacating the order modifying and construing such Consent Decree of January 31, 1958, such latter order being entered herein on February 9, 1959; or, in the alternative, that an order be entered herein staying the effective date of the order entered in this cause on the 9th day of February, 1959, for such period of time as may in the sound discretion of this Court seem reasonable or proper to permit the said JOHN CUNNINGHAM and others similarly situated to prepare and file in this cause such instruments and pleadings as may be requisite to protect their rights and interests which otherwise will be adversely affected by the rendition of such order of February 9th aforesaid, such stay to be for a period of not less than thirty days, pending an appeal in this cause; and further that the plaintiff JOHN CUNNINGHAM have such other and further relief as to this Honorable Court may see just and proper upon hearing of this Motion.

Respectfully submitted,

JOSEPH M. WILLIAMSON, Attorney
100 South Bennett Street
Urbana, Illinois

DANZANSKY & DICKEY, Attorneys
1406 G Street, N. W.
Washington 5, D. C.

By
Raymond R. Dickey

Marshall E. Miller

Filed
Mar 9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
MAR 9 1959
HARRY M. HULL
CLERK

JOHN CUNNINGHAM
Plaintiff
v.
JOHN F. ENGLISH, et al
Defendants

Civil Action No. 2501-57

NOTICE OF APPEAL

Notice is hereby given, this 9th day of March, 1959, that John Cunningham, one of the plaintiffs in the above-captioned cause, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the ninth day of February, 1959 in favor of the plaintiffs (except John Cunningham) and the Board of Monitors and against the defendants, construing and modifying the Consent Order heretofore entered herein on January 31, 1958.

Respectfully submitted,

JOSEPH M. WILLIAMSON
100 South Bennett Avenue
Urbana, Illinois

____

DANZANSKY & DICKEY
1406 G Street, N. W.
Washington 5, D. C.

By__________________________

____

Attorneys for the Plaintiff

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA:

Please send copies of the foregoing Notice of Appeal

LAW OFFICES
DANZANSKY & DICKEY
DISTRICT NATIONAL BLDG.
1406 G STREET, N. W.
WASHINGTON 5, D. C.

to Martin F. O'Donoghue, Esquire, 331 Tower Building, Washington 5, D. C., Godfrey P. Schmidt, Esq., 12 East 41st Street, New York 17, New York, L. N. D. Wells, Jr., Esq., 1610 National Bankers Life Building, Dallas 1, Texas, and Edward Bennett Williams, Esq., 839 -- 17th Street, N. W., Washington, D. C.

DANZANSKY & DICKEY

By______________________________

United States District Court for the District of Columbia

JOHN CUNNINGHAM, et al.,
Plaintiff.

vs.

JOHN F. ENGLISH, et al.,
Defendant.

CIVIL No. 2681-57

NOTICE OF APPEAL

Notice is hereby given this 4 day of March, 19 59, that the defendants

hereby appeal~~s~~ to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 9th day of February, 1959 in favor of the plaintiffs and the Board of Monitors defendants, construing and modifying the Consent Order against entered herein on January 31, 1958, and denying defendants' motion to remove Godfrey P. Schmidt, Esquire, as Monitor.

/s/
Edward Bennett Williams
Attorney for
Defendants
1000 Hill Building
Washington 6, D.C.

The clerk will please send copies to Martin F. O'Donoghue, Esquire, 331 Tower Building, Washington 5, D.C., Godfrey P. Schmidt, Esquire, 12 East 41st Street, New York 17, New York, L.N.D. Wells, Jr., Esquire, 1610 National Bankers Life Building, Dallas 1, Texas, and Danzansky and Dickey, 1406 G Street, N.W. Washington 5, D.C.

1952 CONSTITUTION

Article II, Section 4. - Eligibility to Office

To be eligible for election to any office of a local union or the International Union a member must be in continuous good standing for a period of two years prior to nomination for said office and must have worked at the craft as a member for a total period of two years. This does not apply to officers of newly organized local unions, except as follows: In local unions organized for less than two years an individual must be a member and in continuous good standing and must have worked at the craft as a member for at least half of the period of time since the local union was chartered by the International Union. The requirement of having worked at the craft as a member shall not be construed to prevent any member holding local union office at the time of the 1952 convention from continuing in office for the balance of the term thereof, or to prevent him from being eligible for subsequent elections to office in a local union or to election for office in the International Union. To be eligible to hold office in a local union a member must be a citizen of the country in which his local union is located. Officers under this section shall also include members of local executive boards, business representatives of local unions, delegates to central bodies, and delegates to all conventions of labor.

Article III, Section 8(b) - Amendments to Constitution; Resolutions

Amendments to the Constitution shall be adopted by a two-thirds vote of the delegates present in convention assembled. Duly adopted amendments to the Constitution shall become effective as of the first day of December following the close of the convention unless otherwise specified in any particular amendment adopted by the convention.

Article X, Section 5(c) - Payment of Dues and Fees and Receipt Therefor

All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Any member failing to pay his dues at such time shall not be in good standing. Any member who shall be three months in arrears in the payment of

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Article X, Section 5(c) - (continued)

dues, fines, assessments, or other charges, at the end of the third month, shall automatically stand suspended and shall not be entitled to any rights or privileges as a member of the local union or International Union. Local unions may provide suspension or expulsion for lesser period of arrearages.

1957 CONSTITUTION

Article II, Section 2(a) - Membership

Any person of good moral character, employed in the craft or the various employments over which this International Union has jurisdiction, shall be eligible to membership in this organization. Provided, that hereafter no person shall be eligible for membership in this organization who has not declared his intention to become a citizen of the United States, if a resident of the United States, or of Canada, if a resident of Canada, or who, having declared such intention, has permitted same to lapse.

Article II, Section 4 - Eligibility to Office

To be eligible for election to any office of a Local Union or the International Union a member must be in continuous good standing for a period of two (2) years prior to nomination for said office and must have worked at the craft as a member for a total period of two (2) years. This does not apply to officers of newly organized Local Unions, except as follows: In Local Unions organized for less than two (2) years an individual must be a member and in continuous good standing and must have worked at the craft as a member for at least half of the period of time since the Local Union was chartered by the International Union. The requirement of having worked at the craft as a member shall not be construed to prevent any member holding Local Union office or employed as a full-time organizer for the International Union at the time of the 1952 convention from continuing in office for the balance of the term thereof, or to prevent him from being eligible for subsequent elections to office in a Local Union or to election for office in the International Union. To be eligible to hold office in a Local Union a member must be a citizen of the country in which his Local Union is located. Officers under this section shall also include members of Local Union Executive Boards, business representatives of Local Unions, delegates to central bodies, and delegates to all conventions of labor, other than the conventions of the International Brotherhood of Teamsters.

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1957 CONSTITUTION

Article III, Section 5 - Election of Delegates and Alternates

All delegates to the International Convention shall be selected by vote at a regular or authorized meeting of the Local Union, or such delegates may be appointed by the Executive Board of the Local Union if so authorized by a vote of the Local Union membership at a regular or authorized meeting. All convention delegates, except substitute delegates, shall be selected during the period from the receipt by the Local Union of the convention call up to the thirtieth (30th) day preceding the first (1st) day of the convention. In the event of disability of a delegate selected by a Local Union to attend the convention, the Executive Board of that Local Union may appoint a substitute to replace such delegate. Each delegate or substitute must be an active member working at the craft. This, however, must not be construed so as to bar the selection of salaried officers of Local Unions or officers of the International Union. All International Officers, Organizers and Auditors who have worked continuously for one (1) year or more shall be entitled to all the privileges of regularly credentialed delegates; provided that this shall not be construed to make eligible for International Office an organizer or auditor who is not otherwise eligible through having worked at the craft for such a length of time as to have made him eligible for International Office as in this Constitution provided.

Article III, Section 8(b) - Amendments to Constitution; Resolutions

Amendments to the Constitution shall be adopted by a two-thirds (2/3) vote of the delegates present in convention assembled. Duly adopted amendments shall become effective immediately upon their adoption unless otherwise specified in any particular amendment adopted by the convention. This amendment to Article III, Section 8(b), shall become effective immediately upon adoption.

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Article IV, Section 1 - International Officers

(a). The officers of the International Brotherhood of Teamsters shall consist of a General President, General Secretary-Treasurer, thirteen (13) Vice Presidents, and three (3) Trustees. The General President, thirteen (13) Vice-Presidents and General Secretary-Treasurer shall constitute the General Executive Board. In the case of a vacancy occurring between the time of the convention and December 1 of such year in any International Union Office, such vacancy shall be filled by the officer-elect to the position vacated. The provisions of this Article IV, Section 1 (a), excepting the provisions with respect to the filling of the vacancy, shall not become effective until December 1, 1957.

(b). Vice-Presidents shall be known as First, Second, Third, etc., in accordance with their seniority on the General Executive Board.

(c). Not more than two (2) officers from any one (1) city can be elected to hold a position entitling him to a seat on the General Executive Board. The officers of the International Union shall as near as practicable be uniformly distributed throughout the entire country.

Article VI, Section 1(b) - General Duties

The General President shall have general supervision over the affairs of the International Union, which shall be conducted in accordance with the Constitution and subject at all times to review and approval of the General Executive Board.

Section 1(g)

The General President when so requested by the Executive Board of a Local Union, shall have authority in his discretion to direct that a referendum vote be held by the membership of any Local Union in respect to any question or situation where a vote of the membership is required either under this Constitution or the Constitution or by-laws of the Local Union involved.

Section 2 - Judicial Powers

(a) He shall have authority to interpret the Constitution and laws of the International Union and to decide all questions of law

Article VI, Section 2 (continued)

thereunder between meetings of the General Executive Board, and shall have authority, unless some other procedure is expressly provided in this Constitution, to settle and determine all grievances and disputes submitted to him by Joint Councils, Local Unions, and other subordinate bodies, between meetings of the General Executive Board, all subject to appeal to the General Executive Board, and, thereafter to the next Convention in the manner and to the extent prescribed in this Constitution. When any action is taken as provided herein between meetings of the General Executive Board such action shall be reported to the next meeting of the General Executive Board for its approval, reversal or modification, if an appeal has been taken.

(b). When the General President makes a decision or orders a Local Union to observe the laws, and the Local Union refuses, the Local Union shall be subject to suspension or revocation of charter by the General Executive Board.

Arbitration; Procedure; General President Empowered to Submit Question of Arbitration to General Executive Board When Satisfied That Local Union Is Not Justified in Rejecting Arbitration

Section 4 - Approval of By-Laws of Local Unions

By-Laws of Local Unions and other subordinate bodies and amendments thereto shall be subject to the approval of the General President. If the General President fails to approve the by-laws, the matter may be referred by the subordinate body to the General Executive Board for its determination.

Section 5 - Power of General President to Appoint Trustees and Duties and Obligations of Local Unions Under Trusteeship

(a). If the General President has or receives information which leads him to believe that any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organizations are not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or are being conducted in such a manner as to jeopardize the interests of the International Union, he may appoint a tempoary Trustee to take charge and control of the affairs of such Local Union or other subordinate body; provided, however, that before the appointment of such temporary Trustee, the General President shall set a time and place for a hearing for the purpose of determining whether such temporary Trustee shall be appointed, and further provided that where, in the judgement of the General President that an emergency situation exists within the Local Union or other subordinate body, the temporary Trustee may be appointed prior to such hearing, but such hearing shall then commence within thirty (30) days and decision made within sixty (60) days after the appointment of such temporary Trustee; and further provided that in all cases the Local Union or other subordinate body shall be advised of the reasons for the appointment. Adequate notice, at least ten (10) days prior to the date of the hearing, shall be given to the Local Union or other subordinate body involved. In the case of all hearings conducted pursuant to or after the establishment of a Trusteeship, the General President shall designate a panel comprised of at least one (1) International Union Vice-President and one (1) disinterested member of the International Brotherhood of Teamsters from the area involved. Such representatives shall make their recommendations to the General President, orally or in writing within ten (10) days after the completion of the hearing, and the decision in the case shall be made by the General President himself, which decision shall be made within ten (10) days after such recommendations are received by him and such decisions shall be promptly transmitted to the Local Union or other subordinate body. Appeals, if any, from determinations following such hearings shall be taken directly to the General Executive Board. Appeals, if any, from decisions of the General Executive Board shall be taken to the Convention by the Local Union or subordinate body affected. Procedures on appeals under this Section, insofar as is consistent with this Section, shall be governed by the provisions of Article XVIII.

The International Union shall not be responsible for any actions or activities of a Local Union or other subordinate body under Trusteeship unless such actions or activities have been directed or authorized by the Trustee.

(b). The Trustee shall be authorized and empowered to take full charge of the affairs of the Local Union or other subordinate body, to remove any or all officers and shall within sixty (60) days appoint temporary officers during his Trusteeship, and to take such other action as in his judgment is necessary for the preservation of the Local Union or other subordinate body and their interests. He shall report from time to time on the affairs and transactions of the Local Union or other subordinate body to the General President. His acts shall be subject to the supervision of the General President. The General President may remove Trustees at any time and may appoint successor Trustees. The terms of office of officers so removed shall terminate as of the date of removal, unless otherwise absolved.

(c). The removed officers shall turn over all moneys, books and properties of the Local Union or other subordinate body to the Trustee, who must receipt for the same.

(d) Temporary officers and Trustees must be members in good standing of Local Unions in good standing. They must give bonds for the faithful discharge of their duties, satisfactory to whoever appointed them, which shall not be less than the amount of money they are apt to handle.

(e) The Trustee shall take possession of all the funds, books, papers and other property of the Local Union or other subordinate body and tender a receipt for same. He shall pay all outstanding claims, properly proved, if funds are sufficient. If the funds are not sufficient he shall settle the most worthy claims, as his judgment dictates, unless otherwise provided for in this Constitution. In the event the charter of the Local Union or other subordinate body is suspended or revoked, all its funds, books, papers and other properties shall be forwarded to the General Secretary-Treasurer, who shall hold

Article VI, Section 5 - (continued)

it for the purpose of reorganization. If no reorganization occurs within a period of two (2) years, such funds shall be transferred to the general funds.

(f) .... When the Trustee recommends self-government be restored, or when the Local Union or other subordinate body petitions for such restoration, and such restoration is approved and ordered by the General President, or General Executive Board, or when the General President or General Executive Board direct that self-government be restored, the Trustee shall direct an election at such time as he may designate, any other provision of this Constitution or Local Union rules or by-laws to the contrary notwithstanding and following such election and installation, the Trusteeship shall terminate and the Trustee shall return all remaining funds, property, books and papers to the appropriate officers of the Local Union or other subordinate body.

Section 7 - Official Journal

(a). The official Journal shall be published under the supervision of an editorial staff of not less than two (2) members selected by the General President and approved by the General Executive Board, such staff to work under the direction of the General President, but to be responsible to and guided in its policies by the General Executive Board. A copy of the Journal shall be sent directly to each member in good standing who may furnish his name and address to the General President through the Local Union Secretary-Treasurer. The General President shall be empowered to employ such help as he may need to carry on this work.

(b). The Local Union Secretary-Treasurer shall at reasonable intervals provide the Office of the General President with current lists of members in good standing so that they may receive the Journal.

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Article VII - General Secretary-Treasurer -- Duties and Powers

Section 2 (c). The General President and General Secretary-Treasurer and all other representatives or employees of the International Union who handle any funds of the International Union or subordinate body thereof or are involved in the making of any expenditures from the general fund shall be bonded in amount sufficient to protect the International Union.

Section 7 - Staff and Audits

The General Secretary-Treasurer may appoint International Auditors and their salaries per diem and expenses shall be fixed in accordance with the provisions of ARTICLE V, Sections 1(d) and (e), the number of such auditors to be determined by the General Executive Board. The General Secretary-Treasurer, when he deems it for the best interest of the International Union, is hereby empowered to remove any International Auditor, with the approval of the majority of the General Executive Board. Local Unions, Joint Councils, Conferences or subordinate bodies and joint operations which receive any donations, advances, matching funds or special payments of any nature from the International Union shall keep full financial records respecting the same and the manner in which they are expended. The books of every Local Union, Joint Council, Conference, and joint organizing fund shall be audited by a certified public accountant at least once a year, at its expense, and by the International Union every two (2) years. Copies of the annual audit shall be forwarded to the General Secretary-Treasurer and such information as necessary to comply with U.S. Internal Revenue Form 990 shall be made available to the membership of the subordinate bodies. If the subordinate bodies fail to make an annual audit the International Union shall do so.

Article IX - General Executive Board - Duties and Powers

Section 5 - Meetings of General Executive Board

The General Executive Board shall hold quarterly meetings at such specific time and place as shall be determined by the General President. Upon the written request of a majority of the General

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Article IX, Section 5 - (continued)

Executive Board to the General President it shall be the duty of the General President to call a meeting of the General Executive Board within thirty (30) days. A majority of the members of the General Executive Board shall constitute a quorum for the transaction of its business. The provision of ARTICLE IX, Section 5, with respect to meetings of the General Executive Board, shall not become effective until December 1, 1957.

Section 6 - Action When Not in Formal Session

In all matters requiring action by the General Executive Board, and when the General Executive Board is not in formal session, the General Executive Board may act by telegram, letter or long distance telephone. . . . .

Article X - Initiation Fees, Per Capita Tax, Etc.; Book Audits of Local Unions

Section 3 - Payment of Initiation Fees, Reinstatement Fees, and Per Capita Tax

(a). Each Local Union shall pay to the General Secretary-Treasurer the sum of one dollar ($1.00) for every initiation fee or equivalent thereof collected up to and including twenty-five dollars ($25.00). When the initiation fee exceeds twenty-five dollars ($25.00) there shall be paid to the International Union ten per cent (10%) of the total initiation fee.

(b). Each Local Union shall pay to the General Secretary-Treasurer a per capita tax of forty cents (40¢) per month, payable for the current month, not later than the tenth (10th) day of the succeeding month.

Section 4 - Per Capita Tax; Preferred Payment

Per capita tax due the International Union each month shall be paid before the payment of any other bills or obligations of the Local Union.

Section 5 - Payment of Dues and Fees and Receipt Therefor

(c). All members paying dues to Local Unions must pay them on or before the first business day of the current month, in advance. Where membership dues are being checked off by the employer pursuant

Article X, Section 5 (c) -(continued)

to properly executed checkoff authorization, it shall be the obligation of the member to make one (1) payment of one (1) month's dues in advance to insure his good standing. Thereafter, he shall remain in good standing for each consecutive month for which the monthly checkoff is made. Any member failing to pay his dues at such time shall not be in good standing. Any member who shall be three (3) months in arrears in the payment of dues, fines, assessments, or other charges, at the end of the third (3rd) month, shall automatically stand suspended and shall not be entitled to any rights or privileges as a member of the Local Union or International Union. Local Unions may provide suspension or expulsion for lessor period or arrearages.

(d). A Local Union may provide by-laws for the payment of quarterly dues, provided such by-laws are approved by the General President of the International Union. In any instance where a Local Union has provided for the payment of quarterly dues under this Section, any members thereof failing to pay such quarterly dues in accordance with such provisions shall not be considered in good standing.

(e). No other system of receipting for initiation fees, monthly dues or reinstatements fees will be recognized by the International Union.

Section 7 - Reports To Be Furnished by Local Union Secretary-Treasurer

The Local Union Secretary-Treasurer shall forward monthly to the General Secretary-Treasurer the names of all members initiated or reinstated, together with those who become suspended for non-payment of dues or for any other cause; also a correct list of those who take transfer or withdrawal cards, and shall promptly notify the General Secretary-Treasurer upon the death of any member.

Section 8 - Surety Bond

(a). All Local Union Secretary-Treasurers, business representatives and others who handle funds and property of the Local Union upon assuming office, or employment, shall immediately procure a suitable surety bond or suitable collateral. Said bond must be procured from a recognized bonding company authorized to do business

Article X, Section 8 - (continued)

in the state where the Local Union is situated, a copy of which shall be kept on file at the General Office. The original shall be retained by the Trustees of the Local Union. The General Secretary-Treasurer may direct the increase or decrease in the amount of the bond when he deems it necessary and advisable.

(b). Any Local Union Secretary-Treasurer or business representative failing to obtain or secure or provide a suitable surety bond or suitable collateral satisfactory to the General Secretary-Treasurer or the General Executive Board shall automatically be deprived of holding any office for which a bond is required. Local Union officers failing to comply with this section shall subject the charter of such Local Union to suspension or revocation. The General President or the General Executive Board shall be empowered to suspend or revoke the charter of such Local Union for failure to comply with this section.

Section 11 - Audit of Books of Local Unions

(a). Any organizer or officer of the International Union may be delegated, instructed and empowered by the General President or General Secretary-Treasurer to audit or to employ auditors to audit the books of any Local Union or Local Unions.

(b). Local Union officers shall give the delegated officer for examination, all books, bills, receipts, vouchers and records, bonds, securities or other evidences of ownership to property or investments, of the Local Union whenever requested.

(c). Any officer of a Local Union refusing to turn over the books, bills, vouchers or records to the delegated officer shall be subject to discipline under the provisions of Article XVIII, likewise, shall be liable to expulsion by the General Executive Board.

Article XII - Section 4 - Strike Benefits

Strike benefits in strikes recognized as properly subject to the payment of strike benefits or relief in cases of lockouts, etc., shall be paid to all members not in arrears for dues in excess of one (1) month and otherwise in good standing, who are members

Article XII, Section 4 (continued)

of a Local Union not more than one (1) month in arrears in per capita tax at the rate of fifteen dollars ($15) per week; provided that whenever the total net assets of the International Union shall reach an amount more than five million dollars ($5,000,000.00) below the amount of such assets as disclosed by the General Secretary-Treasurer's report to the 1952 convention then, and in that event, the rate of strike benefits shall revert back to ten dollars ($10) per week for such period of time as such total net assets shall remain below such amount.

Article XIII, Section 1 - General Assistance to Local Unions

No Local Union shall receive financial assistance from the International Brotherhood of Teamsters unless the Secretary-Treasurer of said Local Union has been bonded in accordance with the provisions of this Constitution.

Article XVIII - Trials and Appeals

Section 1 - Trials of Local Union Officers and Members--Procedure

(a). A member or officer of a Local Union charged by any other member of the Local Union with any offense constituting a violation of this Constitution, shall, unless otherwise provided in this Constitution, be tried by the Local Union Executive Board. If the member charged or preferring the charges is a member of such Board then the president of the Local Union shall appoint a disinterested member as a substitute. If the president of the Local Union is charged or is preferring the charges the Local Union Secretary-Treasurer shall appoint the substitute.

(b). Whenever the charges are preferred against any member or officer of a Local Union, the charges shall be filed in writing in duplicate with the secretary of the Local Union, Joint Council or General Executive Board which is to try the case. No member or officer of a Local Union shall be tried unless he or she shall be served by the secretary, personally or by registered or certified mail, with a written copy of such charges specifying the nature of the offense of which he or she is accused. Thereupon, the accused

1957 CONSTITUTION

Article XVIII, Section 1(b) - (continued)

shall be required to stand trial at the time and place designated, which shall not be less than ten (10) days from the date the charges are served upon the accused. The accused may appear in person, and with witnesses, to answer the charges preferred against him or her. He may select only a member of his Local Union to represent him in the presentation of his defense.

(d). Upon filing of such charges, and if the same are of such magnitude and seriousness as to jeopardize the interests of the Local Union or International Union, then, and in that event, the General President, if the matter is brought to his attention, may, if he deems it advisable, immediately suspend such member or officer from membership or office in the Local Union until a decision has been rendered in the case.

Section 3 (d). - Trials and Appeals of Local Unions, Other Subordinate Bodies, and Elective International Union Officers

Trial of elective International Union Officers shall be before the General Executive Board at such time and place as fixed by the General Executive Board. The officer charged shall be found guilty only on a majority vote of the entire General Executive Board. Appeals by such general officers from decisions of the General Executive Board shall be to the convention.

Section 4(a). - Original Jurisdiction of General Executive Board To Try Offenses Against International Union

Notwithstanding any other provision of this Constitution, the General Executive Board shall have jurisdiction to try individual members, officers, Local Unions, Joint Councils or other subordinate bodies for all offenses committed against the officers of the International Organization or the International Organization. In the event charges have been filed or hearings are pending before a subordinate body in respect to any offense over which the General Executive Board has assumed jurisdiction under this section, the jurisdiction of such subordinate body shall forthwith terminate and the subordinate body shall, upon request of the General Executive

Article XVIII, Section 4(a) - (continued)

Board, transfer all of its records and papers pertaining to the case to the General Executive Board.

Section 6 - Grounds for Charges Against Members, Local Unions, Joint Councils and Officers

The basis for charges against members, officers, Local Unions, Joint Councils or other subordinate bodies, for which he or it shall stand trial, shall consist of but not be limited to the following:

(1) Violation of any specific provision of the Constitution or failure to perform any of the duties specified thereunder.

(2) Violation of the oath of loyalty to the Local Union and the International Union.

(3) Violation of the oath of office.

(4) Gross disloyalty, or conduct unbecoming a member.

(6) Misappropriation.

(10) Activities which tend to bring the Local Union or the International Union into disrepute.

(11) Disobedience to the regulations, rules, mandates and decrees of the Local Union or of the officers of the International Union.

(12) Such other acts and conduct which shall be considered inconsistent with the duties, obligations and fealty to a member of a trade union, and for violation of sound trade union principles.

Section 10 (a) - Emergency Power in General President To Conduct a Trial When Welfare of Organization Demands

Whenever charges involving a member or members, officer of officers, Local Union, Joint Council or other subordinate body create, involve or relate to a situation imminently dangerous to the welfare of a Local Union, Joint Council, other subordinate body or the International Union the General President is empowered, in his discretion, in all cases except where the General Executive Board has assumed jurisdiction under Section 4 of this article, to assume original jurisdiction in such matter, regardless of the fact that charges have been filed with a subordinate body and are pending. When the

Article XVIII, Section 10 - (continued)

General President has assumed such original jurisdiction under this section, the jurisdiction of the subordinate body shall cease. Under such circumstances, the General President shall hold a hearing upon giving not less than forty-eight (48) hours notice to the party or parties charged to appear before him at a place and time designated by him. He shall then proceed to hear and try the matter and render judgment in accordance with the facts and circumstances presented to him. When the General President has so acted, an appeal shall lie from his decision to the General Executive Board, and from the General Executive Board to the convention in the same manner and to the same extent only as is provided for appeals in other cases. Pending appeal from the General President's action, his decision shall stand and be enforced.

Section 13 (a) - Revocation of Membership on Being Found Guilty of Crime

When a member is convicted of the commission of a crime or serious wrongdoing, or pleads guilty to the commission of a crime or serious wrongdoing, against the Local Union or against the community, and which crime or act of serious wrongdoing tends to bring dishonor upon the Local Union or the International Union, it shall be the duty of the Local Union to proceed to revoke the membership of such member. Likewise, whenever a member of a Local Union has engaged in what is commonly termed racketeering, and he is found guilty thereof, thereby bringing dishonor upon the Local Union or upon the International Union, it shall be the duty of the Local Union to proceed in the manner provided in Article XVIII, Section 1, to revoke the membership of such member.

Section 15 - Exhaustion of Remedies

All decisions following trials or hearings shall be made and rendered within sixty (60) days of the date of the hearing of trial commenced, unless otherwise ordered by the General Executive Board.

Article XIX - Dissolution

No Local Union can dissolve, secede or disaffiliate while there are seven (7) dissenting members; no Joint Council can dissolve, secede or disaffiliate while there are two (2) dissenting Local Unions; nor can this International Union dissolve while there are seven (7) dissenting Local Unions.................

Article XXI - Local Unions

Section 1 - Each Local Union shall have the right to make such by-laws as it may deem advisable, providing they do not conflict with the laws of the International Union. Where the General President fails to approve the by-laws the Local Union may refer the matter to the General Executive Board.

Section 5 - Nomination of officers shall take place in November or December. The election shall follow at the next meeting, provided, however, that if it is so voted by the membership at a regular or special meeting held for such purpose prior to the election meeting, the election may be held at such other place or places and at such other time not later than one (1) month after the nomination meeting as may be designated by the Local Union Executive Board, in which case the election shall be by secret ballot to be placed in boxes (unless the Executive Board of the Local Union has authorized the use of some standard type of election mechanical device insuring a secret ballot by machine vote), the election box or machine however to be located at a place or places designated by the Local Union Executive Board for the convenience of membership; balloting shall be open to suit the convenience of the membership and for a period not less than six (6) hours between the hours of 8:00 a.m. and 8:00 p.m., and it shall be the duty of the Local Union Executive Board to provide safeguards for the honest and fair conduct of such election, including grant of right to each nominee in such election of at least one (1) observer at all times. The officers-elect may be installed at the same meeting at which they are elected or, if not elected at a meeting, at the next meeting following their election. Where the nominee is unopposed at the regularly designated

Article XXI, Section 5 - (continued)

nomination meeting, there shall be no necessity for the election of such nominee and he shall be declared duly elected at such nomination meeting, effective as of the conclusion of the term of the previous incumbent. The General President is authorized to change the time and place of nomination and election provided for in this section.

Article XXII - Duties of Local Union Secretary-Treasurers

Section 1 - Local Union Secretary-Treasurers, immediately upon taking the Office of Secretary-Treasurer, shall procure a suitable surety bond or suitable collateral, and a copy of the same must be filed in the General Office.

Section 5 - Local Union Secretary-Treasurers must keep the International Union bookkeeping system, consisting of a day book, ledger records and cash book, or any other mechanical system approved by the General Secretary-Treasurer, and must issue dues books.

Section 6 - Local Union Secretary-Treasurers must keep the applications of all new members initiated filed monthly.

Section 10 - Local Union Secretary-Treasurers shall report to the General Secretary-Treasurer by the tenth (10th) day of each month, the number of men that are being carried on the books of the Local Union as good standing members as of the first (1st) day of that month, and all new members who have been initiated during the previous month and all members who have paid up their back dues and again become in good standing. This report must be made on the monthly report blank that is issued by the General Secretary-Treasurer.

Section 13 - Local Union Secretary-Treasurers shall send to the General Secretary-Treasurer a revised list quarterly of the names and addresses of all members in good standing in the Local Union.

Section 16 - Local Union Secretary-Treasurers must see that the Chairman of the Trustees forwards a copy of the monthly audit, properly signed by the Trustees, showing the balance on hand with the Local Union to the General Secretary-Treasurer.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,983

John F. English, Et. Al.
Appellants

vs

John Cunningham, Et. Al.
Appellees

JOINT APPENDIX

VOLUME II

Exhibits
Transcript References

United States Court of Appeals
For the
District of Columbia Circuit

FILED APR - 3 1959

Joseph W. Stewart
CLERK

Mon. Ex. [illegible]

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTIN F. O'DONOGHUE, CHAIRMAN
831 TOWER BUILDING
WASHINGTON 5, D. C.

GODFREY P. SCHMIDT
12 EAST 41ST STREET
NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

August 15, 1958

ORDER OF RECOMMENDATION NO. 16

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
JOHN R. ENGLISH, General Secretary-Treasurer,
International Brotherhood of Teamsters

RE: Filing of Charges Against Owen B. Brennan,
7th Vice-President

The Board of Monitors has made a careful analysis and thorough study of the testimony given before the Senate Select Committee on August 6--7, 1958, concerning Mr. Owen B. Brennan, 7th Vice-President.

It appears that in 1952 Mr. Brennan obtained a $75 per week job for Mr. Embrel Davidson, a boxer whom he was managing, as claims investigator for the Michigan Conference of Teamsters Welfare Fund. Mr. Davidson received checks from the fund from 1952 to 1954 when Vice-President Brennan ceased to manage him. Further the evidence disclosed that Mr. Davidson never did any work as a claims investigator. Vice-President Brennan declined, on the basis of the Fifth Amendment, to answer any questions concerning his relationship with Mr. Davidson.

Vice-President Brennan also declined, on the basis of the Fifth Amendment, to answer any questions regarding:

(a) His connection with Test Fleet Co., a corporation formed in the maiden names of the wives of Vice-President Brennan and General President Hoffa, by officials of Commercial Carriers shortly after General President Hoffa intervened and settled a Teamster strike against Commercial Carriers;

(b) His association with General President Hoffa in certain gambling activities; and

(c) His association with gangsters and criminals.

Accordingly, the Board of Monitors recommends that General Secretary-Treasurer English take the following action by August 25, 1958:

1. File charges with the General Executive Board against Vice-President Brennan for expulsion from membership, in accordance with the provisions of Article XVIII, Section 3(d) of the International Constitution on the grounds of misappropriation, and on the grounds that he has violated his oath of loyalty and his oath of office, that he has engaged in conduct unbecoming a member and activities which tend to bring the Union into disrepute, and that he has committed acts which are inconsistent with the duties, obligations and fealty to members of the Union and which violate sound trade union principles.

2. Request Vice-President Brennan to take a leave of absence, without payment of salary, from his position as International Vice-President until a final decision has been made on the charges.

3. Instruct Price Waterhouse & Co. to audit the records of the Michigan Conference Welfare Fund for the period during which payments were made to Mr. Davidson. This is necessary and imperative in order to determine the amount of money paid to Mr. Davidson, so as to establish definitely the amount of money that General President Hoffa and Vice-President Brennan must pay back to the Welfare Fund.

4. Arrange for a thorough investigation of the charges against Vice-President Brennan.

5. Notify the Executive Board of Local Union 332, Detroit, Michigan, of these facts and the action being taken by the International Union and recommend that consideration be given to instituting proceedings to remove Mr. Brennan from his office as President of the Local.

The Board of Monitors also recommends that, inasmuch as General President James R. Hoffa was a business associate of Vice-President Brennan in managing Mr. Davidson, General President Hoffa, by August 25, 1958, should disqualify himself from any participation, direct or indirect, in the filing and investigation of the charges against Vice-President Brennan and in the conduct of the hearings concerning them.

Member Wells dissents from the issuance of this Order of Recommendation for the reasons expressed in his attached memorandum.

Martin F. O'Donoghue
Martin F. O'Donoghue, Chairman
Board of Monitors

MEMORANDUM OF MEMBER WELLS
CONCERNING ISSUANCE OF
ORDERS OF RECOMMENDATION NOS. 16 AND 17

The orders issued today with respect to Mr. Brennan and Mr. Feldman constitute a gross abuse of the Monitors' powers, for the following reasons:

(1) Each order recites as fact matters which at the present time have not been established. For example, the order with respect to Brennan recites as fact the story which a professional prizefighter gave to the Senate Committee with respect to alleged wrongdoings of Brennan.

On the basis of information supplied an employee of the Monitor Board by an investigator for the Senate Select Committee, it would appear that the prizefighter's testimony before the Committee varied from the account which the prizefighter originally furnished the investigator.

(2) Each order requires, without hearing, that the named individual relinquish union office forthwith, pending final decision on charges which never have been filed.

Such procedure finds no basis in either the union constitution or the court order. It smacks of the totalitarian method by which the defendant is beheaded, and trial then held to ascertain whether there was basis for the execution.

I have no doubt that the Monitors would unanimously, and properly, intervene should General President Hoffa summarily suspend from office a union member who was distasteful to him, on the basis of untested hearsay obtained from a public official or the newspapers. Indeed, we have unanimously insisted that those members who oppose the present administration be afforded full due process, including specific charges, hearing, right to cross-examine, right to appeal, etc. (See Initial Report of Board of Monitors, pp. 9 ff; pp. 14 ff.) The Monitor Board, during Judge Cayton's chairmanship, unanimously determined that the following procedures should be followed to assure fair hearing "in accordance with (the Teamsters') constitution:

> "(a) Copies of all charges should be submitted in writing to the person charged at least ten days prior to any trial or hearing.
>
> "(b) When a person charged requests specification of general charges, such specification should be promptly supplied. Details of the conduct or activity should be described, giving dates and places where possible.

"(c) The trial board should not include among its members any person who is in the role of an accuser. (See Constitution, Article XVIII, Sec. 1(a).)

"(d) Either verbatim minutes of the hearing or accurate summaries of the evidence should be kept. Upon request, these should be made available to the accused.

"(e) The accused should be given a reasonable opportunity, in connection with an appeal, to offer corrections of the stenographic minutes or summaries mentioned in Item (d) above if he deems correction necessary; and his offer of correction should constitute part of the minutes of the proceeding.

"(f) The accused should have the right to confront and cross examine witnesses giving testimony against him.

"(g) The trial board should give to the accused full opportunity to make his defense and to produce testimonial or documentary evidence for that purpose.

"(h) The decision of trial boards should recite the facts which it finds to be true and should also set forth the basis for the decision reached.

"(i) All documents in the proceeding, as well as summaries of evidence or stenographic minutes shall be preserved and kept available for use in further proceedings in the Union.

"(j) It should always be understood that every accusation must be supported by proof."

The persons subject to the instant Monitor orders should no more be deprived of these "basic procedures" than should any other union member. The AFL-CIO Code of Ethical Practices, Code VI, part 2, provides:

> Each member of a union should have the right to fair treatment in the application of union rules and law. The general principle applicable to union disciplinary procedures is that such procedures should contain all the elements of fair plan. No particular formality is required. No lawyers need be used. The essential requirements of due process, however - notice, hearing, and judgment on the basis of the evidence - should be observed. A method of appeal to a higher body should be provided to ensure that judgment at the local level is not the result of prejudice or bias.

If one could conceive of the extreme emergency which would justify the Monitors ignoring the union constitution, the court order under which we serve, our own prior actions, and the codes of ethics applicable to those unions affiliated with AFL-CIO, it could never be with respect to such matters as base the majority's actions which occurred, if at all, in 1948, 1951, 1952 and 1954. The present "emergency" nature of such ancient events is difficult to understand.

(3) Implicit in the Monitor's actions is the basic premise that a union member who invokes his rights under the constitution is presumed guilty. This is not true. The Monitors would do well to heed the recent holding of the United States Supreme Court:

> At the outset we must condemn the practice of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment. Slochower v. Board of Education, 350 U.S. 551 (1956).

(4) The publication of these orders prior to consultation with union officers is contrary to the specific commitment made by the unanimous Monitor Board to the union officers and the Union Executive Board at the meeting of July 2, 1958.

(5) Note that I have taken no position on the substantive merits of the alleged activities of Brennan and Feldman. No position should be taken by either Monitors or the Union General President as to the validity of allegations of wrongdoing by these subordinate officials until they have had an opportunity to defend themselves according to the due process of law provided by the Union Constitution.

Mon. Ex. #2

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTIN F. O'DONOGHUE, CHAIRMAN
831 TOWER BUILDING
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GODFREY P. SCHMIDT
15 EAST 41ST STREET
NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

August 21, 1958

SUPPLEMENTAL ORDER
to
ORDER OF RECOMMENDATION NO. 16

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
JOHN J. CONLIN, First Vice President
JOHN F. ENGLISH, General Secretary-Treasurer
International Brotherhood of Teamsters

RE: Filing of Charges Against Owen B. Brennan, 7th Vice President

The Board of Monitors makes the following supplemental recommendations with respect to Order of Recommendation No. 16.

1. It is recommended that by August 30, 1958, General Secretary-Treasurer English and/or First Vice President John J. Conlin take the action specified in paragraphs 1,2,3,4 and 5 of Order of Recommendation No. 16.

2. It is recommended that by August 28, 1958 General Secretary-Treasurer English and/or First Vice President Conlin employ one of the following attorneys to serve as outside special counsel in the processing of charges against Vice President Brennan and the conduct of the hearing on the charges:

Dean Frank J. Dugan, Georgetown University Law Center
Senator Abe Murdock, 4835 Calvert Street, N.W.
Guy Farmer, c/o Steptoe & Johnson, Shoreham Building

3. It is recommended that any member of the General Executive Board who files charges against Vice President Brennan disqualify himself from participating in the hearing on the charges.

Martin F. O'Donoghue
Martin F. O'Donoghue, Chairman
Board of Monitors

Member Wells dissents from the issuance of this Supplemental Order for the reasons expressed in his memorandum attached to Order of Recommendation No. 16.

File – Brennan
[illegible]

x Brennan, Owen B.

STATEMENT OF MEMBER WELLS CONCERNING SUPPLEMENTAL ORDER TO ORDER OF RECOMMENDATION NO. 16

September 5, 1958

Prosecution by special counsel is not provided in the Union Constitution which provides procedures applicable to all union members.

We have no power to improvise procedures whereby special prosecution is initiated. We should require scrupulous adherence to the Union Constitution. We should not countenance, much less require, departure from it.

Moreover, present union counsel is competent and of high integrity. No valid reason appears for requiring employment of replacement in these circumstances.

L. N. D. Wells, Jr.

Bert Brennan
Chgo

L929
x Feldman Samuel
Mon. Ex #3

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTIN F. O'DONOGHUE, CHAIRMAN
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L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

August 15, 1958

ORDER OF RECOMMENDATION NO. 17

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Filing of Charges Against Samuel Feldman, Business
Agent, Local 929, Philadelphia, Pa.

Solomon J. Freedman, a food purveyor of Philadelphia, testified before the Senate Select Committee on April 22, 1958 that Samuel Feldman, Business Agent of Local Union 929, requested Freedman to inform Horn & Hardart that for the sum of $50,000 Feldman would settle a labor dispute between Horn & Hardart and various local unions, including Teamster Local 107. Mr. Hanlon, Assistant to the President of Horn & Hardart testified that he was contacted by Mr. Freedman but that he refused to have anything to do with the proposal. Invoking the Fifth Amendment, Mr. Feldman refused to answer any questions concerning this matter.

The records of the Senate Select Committee reveal that Mr. Feldman has had six convictions for crimes, including conspiracy, carrying burglary tools, attempted grand larceny, burglary, shop lifting and robbery. At the present time he is under indictment for transporting stolen bonds in interstate commerce.

The Board of Monitors, therefore, recommends to General President James R. Hoffa that the following actions be taken:

1. By August 25, 1958 charges should be filed by the General President against Samuel Feldman for expulsion from membership under the provisions of Article XVIII, Section 10 and Section 13(c) of the International Constitution.

2. A hearing on the charges should be conducted by September 10, 1958.

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3. By August 25, 1958 General President Hoffa should suspend Samuel Feldman from his position in Local Union 929, and file a copy of the Order of Suspension with the Board of Monitors.

4. General President Hoffa should cause an investigation of the allegations made at the hearing of the Senate Select Committee on August 8, 1958 regarding Mr. Feldman's activities in the organization of an independent union of the employees of the Dewey Restaurant Chain in Philadelphia. It is requested that the General President submit to the Board of Monitors a report on this investigation.

Member Wells dissents from the issuance of this Order of Recommendation for the reasons expressed in his memorandum attached to Order of Recommendation No. 16.

Martin F. O'Donoghue
Martin F. O'Donoghue, Chairman
Board of Monitors

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Mon. Ex. #4

MARTIN F. O'DONOGHUE, CHAIRMAN
831 TOWER BUILDING
WASHINGTON 5, D. C.

GODFREY P. SCHMIDT
12 EAST 41st STREET
NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

August 19, 1958

ORDER OF RECOMMENDATION NO. 19

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Filing of Charges Against Glenn W. Smith, President, and H.L. Boling, Secretary-Treasurer, Local Union No. 515, Chattanooga, Tennessee.

It was disclosed at the August 7, 1958 hearing of the Senate Select Committee that Glenn W. Smith, President of Local No. 515 of Chattanooga, Tennessee, testified under oath before the Senate of the State of Tennessee that he expended $20,000 of the Local Union's funds in order to "fix" a criminal case involving officers and members of a Teamsters' local union. On December 17 and 18, 1957, it was revealed at the Committee hearings that Glenn W. Smith, as President, and H.L. Boling, as Secretary-Treasurer of Local No. 515, had signed two checks covering the amount of $20,000 and negotiated same for the Union. Mr. Smith, on December 17, 1957, and Mr. Boling, on December 18, 1957, invoked the Fifth Amendment concerning this matter before the Senate Select Committee.

The conduct revealed on the part of these officers of Local 515 shocks the moral conscience of the community and tends to bring the trade union movement into disrepute and disgrace. These disclosures concerning the use of union funds to influence or fix a criminal case involve a situation imminently dangerous to the welfare of the Union and demand immediate action on the part of the General President. The local union and its members have failed to act. To date the International has failed to take any steps regarding the acts committed by the local union officers.

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The Board of Monitors, therefore, recommends to General President James R. Hoffa that:

(1) The General President exercise the powers conferred upon him under Article XVIII, Section 10 of the International Constitution and by August 25, 1958 file charges for expulsion from membership against Glenn W. Smith and H.L. Boling as officers and members of Teamsters Local 515, on the grounds that they have misappropriated Union funds, that they have violated their oath of loyalty and their oath of office, that they have engaged in conduct unbecoming a member or officer, and that their acts tend to bring the Union into disrepute and violate sound trade union principles;

(2) The hearing on the charges against Glenn W. Smith and H.L. Boling be conducted by September 10, 1958;

(3) The General President conduct a thorough investigation into the acquisition of the sum of $13,500 by Local 515 from the Southern Conference of Teamsters during June, 1951, and if the investigation produces evidence of wrong-doing on the part of any officer or officers of the Southern Conference, appropriate charges be immediately filed;

(4) Instruct Price Waterhouse & Co. to audit the books and records of Local 515 covering the period of time when the checks were issued in payment of the $20,000;

(5) Glenn W. Smith and H.L. Boling be immediately suspended from office by General President Hoffa and a copy of the order of suspension be filed with the Board of Monitors not later than August 25, 1958.

Member Wells dissents from the issuance of this Order of Recommendation for the reasons expressed in his memorandum attached to Order of Recommendation No. 16.

Martin F. O'Donoghue

Martin F. O'Donoghue, Chairman
Board of Monitors

MEMORANDUM OF MEMBER WELLS
CONCERNING ISSUANCE OF
ORDER OF RECOMMENDATION NO. 19

I dissent from that portion of the order which requires immediate suspension without hearing or opportunity to defend. My reasons are set out in my memorandum appended to Order #16 which are incorporated herein.

I do not subscribe to the majority's factual recitals. Charges have been filed, as of this date, within the local union and are scheduled for prompt hearing.

Had the majority followed the procedure required by the Court Order and our published procedures we would have consulted with the International officers and ascertained these facts. The majority's action in issuing orders based solely on reports received from the Congressional Committee or the newspapers without so much as consultation with union officials is bound to multiply misunderstanding and public confusion, impair our effectiveness, and cannot serve to produce either accurate understanding of the true facts or fair determination of the charges.

We should insist on prompt processing of properly filed charges under the Union Constitution, and make such findings and decisions as the full record warrants. We should not pre-judge this or any other case solely on the basis of assertions made by the Congressional Committee or the public press.

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515
[illegible]
Boling, H. L.

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

APPOINTED BY THE UNITED STATES DISTRICT COURT
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August 22, 1958

SUPPLEMENTAL ORDER
to
ORDER OF RECOMMENDATION NO. 19

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Assumption of Original Jurisdiction Concerning Charges Against Glenn W. Smith, President, and H.L. Boling, Secretary-Treasurer, Local Union No. 515, Chattanooga, Tennessee.

The Board of Monitors recommends that General President James R. Hoffa by 5:00 p.m., August 22, 1958, assume original jurisdiction over the charges against Glenn W. Smith, President, and H.L. Boling, Secretary-Treasurer, Local Union No. 515, in accordance with the provisions of Article XVIII, Section 10, for the reasons set forth in Order of Recommendation No. 19.

It is also recommended that by 5:00 p.m., Friday, August 22, 1958, the General President notify Local Union No. 515 that original jurisdiction over the charges against Mr. Smith and Mr. Boling has been assumed and that, in accordance with the provisions of Section 10(a), the jurisdiction of Local 515 with respect to the charges has ceased.

Martin F. O'Donoghue
Martin F. O'Donoghue, Chairman
Board of Monitors

Member Wells dissents from the issuance of this Supplemental Order of Recommendation for the reasons expressed in his attached memorandum.

2. Both the Local Union involved and the individuals charged are entitled to consideration of the viewpoint of the Local Union and its Executive Board in the ultimate evaluation of the charges.

3. The procedure which the Chairman here required deprives them of such consideration; and deprives those who will ultimately decide the charges of the opportunity to ascertain and evaluate the attitude of the Local Union as to the charges.

We owe it to ourselves, the Local Union and the defendant to require decision on the record containing all relevant facts--not upon an abbreviated record necessitated by a "short-cut" procedure initiated with predetermined purpose to find guilt.

This memorandum has been hurriedly prepared on my receipt of telephonic notice that the Order will be delivered within the hour and that I had been given an hour to formulate and record my views. I protest such procedures and in these circumstances reserve the right to supplement and revise this memorandum."

Shortly prior to noon on August 22, after I had submitted the above by long distance telephone, and before publication of either the order or the dissent, I received a conference call from Mr. Bartosic and Monitor Schmidt, in which Mr. Schmidt indicated his concurrence in the Chairman's action, and his disagreement with the considerations which I advanced.

Although it now appears that Chairman O'Donoghue and Mr. Schmidt have separately approved the issuance of the Supplemental Order, this was not done at a Monitor meeting and the Monitors were thus given no opportunity to exchange or test each others views.

Thus the "meeting" at which the order was promulgated was a conference call between Monitors Schmidt and Wells, and Mr. Bartosic, who is not a member of the Monitor Board. While a quorum participated in this "meeting", the requisite majority did not then authorize the instant order--rather, my opposition and Mr. Schmidt's support of the proposed Order resulted in a stalemate, which could not properly be resolved either by the Chairman's prior expression, or his delegation of his duties to Mr. Bartosic.

As I am detailing in a separate memorandum, I think it essential for fair and orderly disposition of Monitor business that Monitor action be taken only after all Monitors have exchanged views and each Monitor has adequate opportunity to inspect, concur, comment upon or dissent from the action. Hurried issuance of Orders, requests or press releases without consultation as a Monitor Board is likely, as here, to result in action either unwarranted by the facts, or beyond our powers.

/s/ L. N. D. Wells, Jr.

L107
Mon. Ex. #6

(Order of Recommendation No. 4)

MEMORANDUM

FROM: Martin F. O'Donoghue, Chairman, Board of Monitors

TO: Harold Gibbons, Executive Assistant to the General President

DATE: June 13, 1958

The past two days the Board of Monitors has had under consideration charges filed with the Board of Monitors by a Rank and File Committee against certain officers of Local Union No. 107. These charges are based upon the testimony adduced before the Senate Select Committee. On Wednesday, the Board of Monitors had Edward Bennett Williams, the General Counsel, and his staff present before the Board of Monitors for a discussion of this case. Following the discussion of the case, the Board of Monitors made the following recommendations to General Counsel Williams to take up with General President Hoffa:

1. That charges would be preferred against Local 107 to take it under trusteeship and that trustee proceedings would be instituted pursuant to Section 5 of the International Constitution and the hearing would be conducted on the charges to ascertain whether or not trusteeship should be imposed.

2. The panel to be appointed to hear the trusteeship proceedings was to consist of one International Vice President, one disinterested member of the International in the area and a public member. This public member was to be either Father Comey, S.J., of the Labor School of St. Joseph's College, Philadelphia, or Professor Taylor, formerly Vice Chairman of the National War Labor Board and now attached to the University of Pennsylvania, or some individual of like stature and standing equipped in the labor relations field.

3. It was further agreed that Price Waterhouse, certified public accountants, were to be authorized by the Board of Monitors to contact the Senate Select Committee and audit and review the books and records of Local 107 and the auditing work sheets of the Senate Select Committee in order to examine the evidence that the Senate Select Committee now has so that this evidence could be presented in an orderly and proper fashion before the panel.

4. That the International Union should immediately notify the bonding company that has now current and in operation a fidelity bond covering the officer or officers of Local 107 in view of the disclosures made by the Senate Select Committee.

Martin F. O'Donoghue
Chairman, Board of Monitors

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Mon Ex #9

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

June 27, 1958

ORDER OF RECOMMENDATION NO. 11

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Election in Trusteed Local Union 245, Springfield, Missouri

William C. Humphrey was dispatched by the Board of Monitors to Springfield, Missouri, to investigate complaints concerning the nomination and election of officers of Local Union 245, scheduled for June 27-29, 1958. Mr. Humphrey reported in full detail to the Board of Monitors that nominations were conducted by craft groups in the local union from May 13 to May 21.

A number of individuals, including Claude Harthcock and Don McClinton, were nominated to oppose Branch Wainwright for the office of President and Business Representative. Others, including John Rogers, were nominated to oppose A. J. Round for the office of Secretary-Treasurer and Business Representative. After these men were nominated, a committee was appointed by the Chairman to check the eligibility of the nominees. Harthcock, McClinton and others were declared ineligible because their employers did not pay their dues within the time limit prescribed by the Constitution. The employers, under a check-off agreement, were responsible for paying dues. These men were ruled as not being in good standing for a period of two years prior to their nominations. The minutes of the meeting of May 20, 1958, contain the following entry:

> "Brother McClinton says he has Company receipts showing that his dues are paid on or before the first and wants to know if the Trustee Representative are going to rule him ineligible. Brother Schneider said he is ineligible according to the Constitution since his dues were not paid at the Union office on or before the first Business Day."

61 355

The dues delinquency occurred in 1956, according to the best belief of Field Examiner Humphrey.

Further, membership attendance records were not kept by the officers of Local 245 in conducting craft meetings and members attended various craft meetings.

The Board of Monitors, therefore, recommends to the General President that the election of officers for Local 245 scheduled for June 27, 28, 29 be postponed indefinitely; that the nominations conducted be cancelled and set aside because clearly members eligible for nomination for office were declared ineligible; and that the method and manner of conducting the nominations was contrary to the Constitution. The Board of Monitors recommends that a new date for nominations be set; that posting of notice for nominations be set at least one month in advance; that a list of all eligible men to run for office be posted simultaneously with the posting of the time, date and place of nominations; that a meeting for nominations be held on a Sunday afternoon beginning at 2 P.M. in an appropriate place in the City of Springfield, Missouri; that the Board of Monitors will also send a Field Examiner to check the lists of eligibility for nominations in the local union.

The Board of Monitors will also recommend that Price Waterhouse conduct a two year audit of books and records of this local union because no certified audit has been made of the books and records of said local union for a long period and no surety bonds have been posted by the officers handling monies.

The Board of Monitors issues this order pursuant to Section 3 and Section 7 of the Court Order.

Martin F. O'Donoghue
Chairman, Board of Monitors

MFO'D:lvk

PRICE WATERHOUSE & CO.

1000 Vermont Avenue, N. W.
Washington 5, D. C.
September 2, 1958

Mr. Martin F. O'Donoghue, Chairman
Board of Monitors for the Teamsters Union
Tower Building
Washington, D. C.

Dear Chairman O'Donoghue:

SPRINGFIELD, MISSOURI LOCAL
UNION NO. 245

Late this afternoon I had a long-distance telephone call from my partner, Mr. Lawrence F. Shepack in St. Louis. He had had a telephone call from Mr. J. D. Sullivan who had gone to Springfield this morning to begin the examination of records in our audit of Local Union No. 245. This was really a resumption of the work, Mr. Shepack and Mr. Sullivan having made a cursory review some days ago. As you know, I was in St. Louis a week ago today to discuss the work with these men and to come to specific agreement on the program of audit.

On Wednesday following my visit to St. Louis, Mr. Sullivan called Local Union No. 245 on the telephone and made arrangements to begin the work this morning. At the time this arrangement was satisfactory to the two business agents.

When Mr. Sullivan arrived in Springfield this morning, he met with Mr. Branch "Tiny" Wainwright. Mr. Wainwright said that he and Mr. A. J. "Doc" Round had had a discussion and had concluded that Local Union No. 245 does not need an audit. He said also that they would so advise Mr. Hoffa.

When Mr. Shepack received this call from Mr. Sullivan, he instructed Mr. Sullivan to come back to St. Louis with his assistant, and so this undertaking is now in abeyance the same as our two undertakings in New York involving Local Union No. 295 and Local Union No. 808.

We will await the receipt of further advice or instructions from you or from the International Union, as the case may be.

Yours very truly,

s/Theodore Herz

9/4. Copy sent to:
Schmidt
Wells

Mon Ex #12

July 10, 1958

ORDER OF RECOMMENDATION NO. 12

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: John J. McNamara, President of Local Union No. 295
and Secretary-Treasurer of Local Union No. 808

Inasmuch as John J. McNamara, President of Local Union No. 295 and Secretary-Treasurer of Local Union No. 808, has been convicted of extortion, the Board of Monitors recommends that Mr. McNamara be requested by General President Hoffa to take a leave of absence from his office as President of Local Union No. 295 and also from his office as Secretary-Treasurer of Local Union No. 808, until his appeal has been decided.

The Board of Monitors also recommends that Price-Waterhouse and Company be authorized to make a one-year audit of the books and finances of Local Union No. 808.

The General President is requested to communicate with the Board concerning this matter by July 16, 1958.

Martin F. O'Donoghue,
Chairman, Board of Monitors

PRICE WATERHOUSE & CO.

1000 Vermont Avenue, N. W.
Washington 5, D. C.
August 11, 1958

Mr. Martin F. O'Donoghue, Chairman
Board of Monitors for the Teamsters Union
Tower Building
Washington, D. C.

Dear Chairman O'Donoghue:

On Friday, August 8, 1958, I was in New York in order to arrange for the examination of the records of Local Union 295 and Local Union 808 in accordance with the instructions we received from you under the date July 29, 1958.

Mr. Warde B. Ogden, a partner in our firm, has undertaken to supervise this work, and the men selected to be in charge of the work in the offices of the two locals are Mr. Joseph Rigney and Mr. Harold Egan. Among the things which I left with these men for their guidance were copies which you furnished to me of letters from Mr. James Hoffa to the Secretary-Treasurers of the two local unions advising them of the arrangements and requesting their cooperation.

Mr. Ogden called me this morning. Our representative had contacted Mr. Michael Burton at Local 295 by telephone in order to make arrangements to begin the work. Mr. Burton said he had not received a letter from Mr. Hoffa. In addition, he said he did not wish to take responsibility for making the arrangements with us without the approval of "a Board" which he says expects to hold its next meeting about two weeks from now. He thought it undesirable to ask the Board to meet for the special purpose of approving the audit examination. In addition to these things, Mr. Burton said most of the records of Local 295 are in the hands of the New York District Attorney.

On Friday (the same day I was in New York) our representative tried to contact Mr. John S. Mahoney at Local 808 by telephone. Mr. Mahoney is the man addressed as Secretary-Treasurer in the letter written by Mr. James Hoffa. He talked with a Mr. Fitzpatrick who identified himself as Business Agent and assistant to Mr. McNamara. Mr. Fitzpatrick said Mr. Mahoney is no longer an official of the local union. Also, he said that the man with whom we must make arrangements for the examination of Local 808 is Mr. McNamara but he did not know how to reach Mr. McNamara on Friday. Our representative called again this morning in an attempt to reach Mr. McNamara but was unsuccessful. In the case of Local 808, we do not know whether or not the letter from Mr. Hoffa was received. Mr. Fitzpatrick said he did not know.

Because of the circumstances described above, I told Mr. Ogden to make no further attempt to begin the work at Local 295 until he had word from me. In the case of Local 808, I suggested that since there were inquiries in the mill, he continue to try to reach Mr. McNamara.

Will you please instruct us further.

Yours very truly

s/Theodore Herz

July 25, 1958

ORDER OF RECOMMENDATION NO. 14

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JOHN F. ENGLISH, General Secretary-Treasurer,
International Brotherhood of Teamsters

The Board of Monitors, at its meeting of July 22, 1958, adopted the attached report of Price Waterhouse and Company and decided to request and recommend that you make a thorough study of it and place it on the agenda of the next meeting of the General Executive Board so that the Board of Monitors and representatives of Price Waterhouse may discuss the contents of this report with the General Executive Board.

You will note that this report calls for the establishing of records of the good standing membership of each member of local unions in the International and that such record keeping is an essential prerequisite to auditing and fiscal purposes, both for the International and the local unions.

Later this afternoon, I intend to forward to you a copy of the financial report dealing with the International and, as soon as I receive it, I will have it delivered by hand to your office.

Martin F. O'Donoghue
Chairman

Mon. Ex. 15

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
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1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

August 18, 1958

ORDER OF RECOMMENDATION NO. 18

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Publication of Orders of Recommendation in The International Teamster.

The Board of Monitors recommends to General President James R. Hoffa that all Orders of Recommendation, beginning with Order of Recommendation No. 15, be published in The International Teamster, beginning with the September 1958 issue, and that a 500-to-1000 word report of the activities of the Board of Monitors, to be prepared by the Monitors, be published in each issue.

It is requested that the Board of Monitors be notified by August 22, 1958 concerning the adoption of this Order of Recommendation.

Martin F. O'Donoghue
Martin F. O'Donoghue, Chairman
Board of Monitors

August 19, 1958

ORDER OF RECOMMENDATION NO. 20

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Rules Governing the Conduct of Local Union Nomination Meetings and Election of Officers; Appointment of Committee to Confer with Monitors Concerning Rules.

The Board of Monitors recommends that (1) General President James R. Hoffa, by August 27, 1958, promulgate for adoption by all Local Union Executive Boards the attached "Rules for the Conduct of Local Union Nomination Meetings and Election of Officers," and (2) by September 15, 1958 the Executive Boards of all Local Unions, including those under trusteeship, adopt these Rules, in accordance with the provisions of Article XXI, Section 5 of The International Constitution.

It is the intention of the Board of Monitors that these rules will remain temporarily in effect, until such time as the Monitors recommend the adoption of model provisions for inclusion in local union by-laws.

The Board of Monitors also recommends that by August 27, 1958 General President Hoffa appoint a committee to confer with the Monitors and their staff concerning these rules and model provisions for inclusion in local union by-laws.

It is requested that the General President notify the Board of Monitors by August 29, 1958 concerning the promulgation of the rules and the appointment of the committee and that the General President forward to the Board by September 20, 1958 copies of letters from all Local Executive Boards concerning adoption of the rules.

Martin F. O'Donoghue, Chairman
Board of Monitors

It is requested that the General President notify the Board of Monitors by August 29, 1958 concerning the promulgation of the rules and the appointment of the committee and that the General President forward to the Board by September 20, 1958 copies of letters from all Local Executive Boards concerning adoption of the rules.

Martin F. O'Donoghue, Chairman
Board of Monitors

RULES GOVERNING THE CONDUCT OF LOCAL UNION NOMINATION MEETINGS AND ELECTION OF OFFICERS

1. At least one month prior to the nomination meeting, a meeting shall be conducted for the purpose of voting upon rules for the conduct of the election not inconsistent with the International Constitution and these rules, and for the purpose of electing an Election Committee to supervise the conduct of the election. The Election Committee shall be composed of a chairman and four members, none of whom shall be a candidate in the election.

2. At least twenty (20) days prior to the nomination meeting a list of those members eligible for nomination shall be posted at the local's office and at barns, warehouses and other places of employment where notices of the Local are posted.

3. No person who has been convicted of bribery, extortion, robbery, embezzlement, grand larceny, arson, the obstruction of justice, burglary, or conspiracy to commit any of such crimes, shall be eligible to run for office, unless one year has elapsed subsequent to the restoration of his right to vote in elections held under the laws of the State of his legal residence.

4. Notices of the time and place of the meeting to elect the Election Committee, the nomination meeting, and the election shall be posted at the Local Union's office, at barns and warehouses and other places of employment where notices of the local are posted. Such notices shall also be sent by mail to members of the local union whose addresses are available.

5. If the eligibility of a member to run for office is contested, the question shall be decided by the Election Committee

within 48 hours. The decision of the Election Committee may be appealed to the General President who shall decide such an appeal within seventy-two (72) hours. The Board of Monitors shall be notified of all such appeals and shall make recommendations to the General President concerning them.

6. Nominations may be made by any member in good standing who attends the nomination meeting. A motion to close nominations shall not be in order until a reasonable opportunity has been afforded for all nominations.

7. Every member in good standing shall have the right to vote.

8. No later than the day following the nomination meetings, a list of the names and addresses of all members then eligible to vote shall be furnished to all candidates.

9. At least twenty (20) days prior to the election a list of members then eligible to vote in the election shall be compiled. This list shall be kept in the Local's office and be made available to all members and candidates.

10. No candidate shall make use of union funds or facilities for his election campaign except on terms of complete equality with all other candidates.

11. Where it is practicable, the balloting shall be conducted by a neutral outside agency, such as the Honest Ballot Association or the American Arbitration Association.

12. Absentee voting by mail may be authorized by majority vote of the membership. Absentee voting shall be conducted with proper safeguards by a neutral outside agency, where practicable, or the Election Committee.

13. Each candidate shall have the right to be present himself or have one observer present at all times during the election, including when the votes are cast and when they are tabulated, provided that such observer shall be a member of the Local Union.

14. All nomination and election records, including the minutes of nomination meetings and ballots cast, shall be impounded immediately and shall be preserved for a period of at least one year.

15. Candidates and their observers may challenge the eligibility of voters, and all challenged ballots shall be impounded. Challenges shall be investigated by the Election Committee only if the challenged ballots are sufficient in number to affect the result of the election.

16. Protests concerning the eligibility of voters, and the conduct and validity of the election shall be promptly decided by the Election Committee. The decision of the Election Committee may be appealed to the General President who shall promptly decide such an appeal. The Board of Monitors shall be notified of all such appeals and shall make recommendation to the General President concerning them. Pending the resolution of such protests by the Election Committee and the General President, there shall be no induction of officers.

17. These rules, which are intended to supplement the provisions of the International Constitution and By-Laws concerning safeguards for democratically conducted nomination meetings and elections, shall be effective September 15, 1958.

MEMORANDUM OF MEMBER WELLS
CONCERNING ISSUANCE OF
ORDER OF RECOMMENDATION NO. 20

While I agree that certain of the proposed election rules are proper, others are clearly ill advised, cumbersome and unworkable. For example:

1. Paragraph 3 sets up a standard of eligibility for office contrary to the eligibility requirements of the Union Constitution. The Monitors have no power to thus amend the Union Constitution.

2. Posting of lists of those eligible for nomination requires a check of thousands--and in some instances hundreds of thousands--of individual dues payment records wholly unnecessarily. Such checks should be required only of those who indicate willingness to be nominated.

3. Mailing notices to each individual member is unnecessary and will cause inordinate expense in addition to constituting an invitation to election protests. Posting in places of employment and union offices is entirely adequate.

4. Paragraph 15 invites controversy and frivolous challenges, and ignores the experience and procedure of the NLRB whereby eligibility lists are prepared and checked prior to the election and challenges permitted only in limited areas.

Majority promulgation of these election rules without consultation with union officials or NRLB agents experienced in election procedures here results in rules and procedures, parts of which are either:

a. Contrary to the Union Constitution, or
b. Cumbersome, unworkable, and requiring inordinate expense, or
c. Without precedent in any Union Constitution.

Further any election procedures we require may well serve as precedent for adoption by other labor organizations. No labor organization in or out of the AFL-CIO presently follows the rules which the majority suggest. I am doubtful that any would be willing to be bound by such unrealistic procedures. Teamsters should be held to no different standards than other labor organizations.

Finally, specification of identical rules without regard to size, form of organization, type and distribution of membership, availability of election facilities and the myriad practical problems is in my view unrealistic.

Rather than insisting upon such uniform specification we should further consult with those experienced in intra-union and NRLB election problems and procedures, specify general standards, leaving their application in local situations to the union membership subject, in the event of complaint, to prompt review by International officials and the Monitors. I think the majority's refusal to do so and the promulgation of the above Order both beyond our powers and unwise.

Box 4 #20

September 5, 1958

ORDER OF RECOMMENDATION NO. 21

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Illegal Merger of Local Union No. 183,
Fairbanks, Alaska, with Local Union No. 959
Anchorage, Alaska.

The Board of Monitors has made a thorough study of information submitted regarding the alleged merger of Local Union No. 183, Fairbanks, Alaska, with Local Union No. 959, Anchorage, Alaska. Particular attention has been paid to the circumstances of the special meeting on December 12, 1957, at which the merger was purportedly approved by the membership of Local 183. On the basis of all the available information, including the official minutes of the meeting of December 12, 1957, and the report submitted by International Vice-President George E. Mock, the Board of Monitors reached the following conclusions.

1. No proper notice specifying the purpose of the special meeting of December 12, 1957, was given to the membership. The law is well established that a vote taken on such an important issue as dissolution or merger is void, where the members have not been sufficiently apprised beforehand that anything so far outside the ordinary business of the union is to be presented at the meeting.

2. The vital question of merger was unfairly presented to the membership by Trustee Raymond Carr; thus a truly democratic expression of opinion was prevented. The minutes reflect that approval of the merger was treated as part of, or as a prerequisite to, the request for the granting of autonomy, and that the two issues were presented for a single vote.

Although the above two grounds are deemed sufficient to require setting aside the supposed merger, attention is also invited to the fact that the minutes reflect that more than seven members of Local 183 opposed the merger. Under Article XIX of the International Constitution, no local union can dissolve while there are seven dissenting members. The law generally regards the merger of one union with another as amounting essentially to a dissolution of the former. It is noted further that the International Constitution contains no express provision for merger as distinguished from dissolution.

Accordingly, the Board of Monitors recommends that General President James R. Hoffa take the following action:

1. By September 12, 1958, inform Local Unions 183 and 959, Vice-President George C. Mock, former Trustee Raymond Carr, and Chairman Einar O. Mohn of the Western Conference, that the purported approval of the merger of Local 183 with Local 959, which was given at the special meeting of December 12, 1957, has been declared null and void by the General President; that the supposed merger has been dissolved; and that Locals 183 and 959 have been restored to the status of separate local unions, with restoration of their respective funds, records, and property.

2. By September 12, 1958, revoke the removal of the trusteeship over Local 183, and order the reinstatement of a temporary trusteeship pending local elections. In view of the arbitrary acts of Raymond Carr, a new trustee should be named for Local 183 by September 10, 1958. Neith Mr. Carr nor Mr. Robert J. Dixon should be appointed as trustee.

3. By September 12, 1958, order Price Waterhouse & Company to make a certified audit of the books and records of Local 183 from January 1, 1957, to date.

4. By January 1, 1959, but no earlier than December 1, 1958, direct that Local 183 be restored to self-government, with the nomination, election, and installation of officers being followed by the removal of the trusteeship.

5. Within two days after each of the above compliance dates, notify the Board of Monitors whether there has been compliance with each recommendation.

6. By October 10, 1958, furnish the Board of Monitors, with a legal memorandum setting forth the authority under the International Constitution for ordering or upholding mergers as distinguished from dissolutions, and setting forth the criteria by which the merger of two locals is distinguished from the dissolution of one local coupled with the transfer of its members to another.

By this Order of Recommendation the Board of Monitors expresses no opinion on the desirability of an eventual merger of Locals 183 and 959, provided authority for such a merger exists and proper democratic procedures are followed.

Martin F. O'Donoghue

Martin F. O'Donoghue,
Chairman

MEMORANDUM OF MEMBER WELLS
CONCERNING THE ISSUANCE OF
ORDER OF RECOMMENDATION NO. 21

September 2, 1958

I dissent from the above Order of Recommendation for the following reasons:

1. The majority action wholly ignores the welfare of the membership in the basic matter of collective bargaining and contract administration. It further ignores the following considerations which have resulted in practically unanimous approval of the merger by these members in attendance at regular meetings:

> "There are many factual and practical reasons for this almost unanimous confirmation of the value of the single local to the membership. Among the important aspects of this single operation:
>
> "1. Most of the members are working in construction, which necessitates their working on jobs, practically all over the Juneau, Fairbanks and Anchorage areas. The single unit operation precludes their having to transfer from one union to another. This free movement from job to job without red tape or hindrance of any sort simplifies the job change situation for the men.
>
> "2. There are only approximately 2700 members under this jurisdiction in the Territory. It is now an established fact that a single local, with union employees assigned to the various focal point areas, can not only operate more efficiently, giving the members more actual service, but also can operate more economically. It is evident that operating costs are noticeably lower than a dual operation would incur in the servicing of a similar number of workers in the same given areas.
>
> "In the overall analysis, the members are getting more service at lower operational cost and at the same time are moving from job to job at less expense and at less inconvenience. These men travel from job to job in small planes flown by bush pilots. The getting around is somewhat difficult in any event and the men appreciate the greater ease of contact with their single local union.

"The original action for amalgamation came from the floor. The point of discussion at the time was greater facilitation for the traveling workers. The subject has been discussed at many meetings since and urged repeatedly at these meetings by the majority of the members. The subject matter was gone over thoroughly at the meeting I attended and the sentiment was very, very strong for the amalgamated operation. There is only a very small group in Fairbanks that has been insisting on the two union operation within the jurisdictional area. These men are motivated by personal desires to hold office and control union operations in that area, an area in which a single local union could command, at the most, a membership of from 500 to 600.

"It is a matter of record that the vast majority of the workers wanted amalgamation in the first place and that, at the present time, operating under the single union they want the operation continued."

The quoted material is contained in a report made to the General President on August 14, 1958, by International Vice President George Mock. The Monitors Order is issued without even a discussion of these important considerations - indeed, without so much as a Monitor meeting to consider same.

By the issuance of this Order, Monitors have wholly departed from the function specified in Judge Letts' Order to "counsel and make recommendations upon review of appeals"...."counsel with and make recommendations to the General Executive Board looking toward the removal of trusteeships where removal is consistent with the best interest of the membership of the locals ..." The majority sets aside a merger which resulted in removal of trusteeship and, on highly technical procedural grounds, as to which we have heard only *ex parte* allegation, insists on return to trusteeship and division of local unions *without a single word of discussion as to the best interest of the membership of the local*.

2. As to the alleged procedural irregularities, we have heard only one side of the controversy through conference with complainants Csperdes and Gilbert. Before making findings with respect to the adequacy of notice, we should ascertain from the present officers just what notice was given.

Nor can we fairly evaluate whether the issue was "unfairly presented to the membership" on the fragmentary record which is before us. If we are to hear Csperdes and Gilbert, we should also hear Trustee Carr and at least some of the many members who have presented letters or telegrams urging us to approve the merger, and deploring the attempts to disrupt the union which they attribute to those who proposed the action which the majority here takes.

The majority sets aside the merger on procedural grounds based on representations as to improper procedure made by Messrs. Csperdes and Gilbert in personal appearances before the Monitors. Present union officers have been given no similar opportunity to appear before us. Findings as to alleged procedural irregularity cannot properly be made until we hear both sides.

3. The order attributes "arbitrary acts" to one Raymond Carr on the basis of hearsay allegations. In my view the arbitrary act is that of the majority in declaring Carr ineligible as Trustee on the basis of such ex parte representation, and without so much as hearing his side of the story.

4. The majority errs as a matter of law in equating "merger" with "dissolution".

5. The requirement that a trustee be appointed who "should not be a member of Local 959 or Local 183" has the effect of turning the collective bargaining fortunes, the wages, hours and working conditions of rank and file Teamsters over to one who has no knowledge of the membership, its problems, its contracts, its grievances or the collective bargaining situation. These are the only Teamster locals in Alaska - thus under the majority's Order the trustee must be from the continental United States, and necessarily wholly unfamiliar with the situation in Alaska. I can conceive of no better way to assure chaos and confusion, an end to the union's organizing efforts, a halt to effective contract administration, than to follow the majority's requirement that a stranger be sent 2000 miles to administer the union's affairs.

Implicit in the majority's prohibition against any member of the Teamsters in Alaska acting as Trustee is the premise that no Teamster in Alaska is sufficiently honest and capable to administer the union's affairs. There is no basis for such position. If a trustee must be appointed, the Alaskan Teamsters deprived of their autonomy, the appointment should be from those who are familiar with relevant economic conditions, collective bargaining patterns and contract administration. As I observed in connection with an earlier proposal of the majority in another context (Initial Report of Board of Monitors p. 109):

> "It is not so easy as to merely wave the wand in Washington and obliterate the present officers and replace them with those familiar enough with the contracts and the collective bargaining relationships to immediately step in without substantial prejudice to the rank and file. Attention should be given to such

matters and proper plans laid before trusteeship is effectuated."

/s/ L. N. D. Wells, Jr.

Member Wells prepared this memorandum before the Order of Recommendation was drafted in its final form, and he reserves the right to amend Paragraph 5 of his memorandum.

PRICE WATERHOUSE & CO.

1000 Vermont Avenue, N. W.
Washington 5, D. C.

August 13, 1958

Mr. Martin F. O'Donoghue, Chairman
Board of Monitors for the Teamsters Union
Tower Building
Washington 5, D. C.

Dear Chairman O'Donoghue:

SUBJECT: LOCAL UNION 808

This morning I received a telephone call from my partner, Mr. Ogden, in New York and I talked on the same call with Mr. Egan. These men have tried three times to reach Mr. McNamara by telephone to make arrangements for the examination of Local Union No. 808 in accordance with the instructions contained in your letter of July 29, 1958. On each occasion they were able to reach only Mr. Fitzpatrick (who is mentioned in my letter of August 11, 1958 on this same subject) and finally Mr. Fitzpatrick said Mr. McNamara was too busy with his pending appeal to be available for a conversation with us. Also he said Mr. McNamara told him to "have them deal with Hoffa". Mr. Fitzpatrick suggested that our representatives try again tomorrow at 4:00 o'clock.

I told Mr. Ogden to discontinue his attempts to reach Mr. McNamara and, specifically, I told him not to make the attempt again tomorrow at 4:00 o'clock, as suggested by Mr. Fitzpatrick. Mr. Ogden asked me if I wanted to keep Mr. Rigney and Mr. Egan assigned to this work so that they could begin to make the examinations when the necessary approvals have been obtained, and I told him to release the men for other assignments. Our New York office is under the pressure of a heavy work load at the present time and to me it seems unreasonable that we should ask them to withhold these men from other assignments when the prospect is that the delay may be of indefinite duration.

We await your further instructions.

Yours very truly,

/s/ Theodore Herz

July 3, 1958

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Appeal to General Executive Board Concerning Joint
Council 13 Election

The Board of Monitors requests that no notice of decision be issued concerning the action taken by the General Executive Board on July 2, 1958 with respect to the Joint Council 13 election appeal until the Board of Monitors has had an opportunity to make recommendations concerning the appeal.

It is also requested that the complete file on the Joint Council 13 election appeal be delivered to the Board of Monitors by 12 o'clock noon, July 3, 1958.

Martin F. O'Donoghue,
Chairman, Board of Monitors

MP 24

BOARD OF MONITORS
For The
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

October 8, 1958

ORDER OF RECOMMENDATION NO. 23

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Eligibility of Nominees for Office in
Local Union No. 377

Joseph Larry Carelly, William James Gaw, and Joseph Sammartino have protested the ruling of the Executive Board of Local Union No. 377 that they are not eligible to run for office because their dues have not been paid on or before the first business day of each calendar month. Mr. William Presser, President of Joint Council No. 71, in his report to the General President has also noted that Mr. Carelly is not in compliance with the requirement of Article X, Section 5(c) of the 1957 International Constitution with respect to the payment of one month's dues in advance by members who are working under a checkoff agreement. Nor have Mr. Gaw or Mr. Sammartino complied with this requirement.

The Monitors have given careful consideration to Mr. Presser's report and to statements of the above-named nominees and the President and Secretary-Treasurer of the Local.

Reasonable notice of the 1957 International Constitution's requirement of the payment of one month's dues in advance was not given to the members of Local 377: the members were not individually notified nor were the provisions of Article X, Section 5(c) read at the Local's meetings or posted on bulletin boards. The brief notice, captioned "Members Take Notice," which appeared in the March issue of The International Teamster, could not reasonably be considered proper notice to the 1,500,000 members of the Union. (In any event, Mr. Carelly is not on the mailing list of the magazine, and it does not appear that the two other nominees read the notice.) It is, therefore, concluded that the provisions of Article X, Section 5(c) of the 1957 International Constitution have not been properly promulgated in Local 377 and that the appropriate provisions of the 1952 Constitution should govern the eligibility of the above-named nominees.

The Monitors are in complete agreement with the interpretation of Article II, Section 4, and Article X, Section 5(c), of the 1952 Constitution, set forth by the General Counsel of the International in his April 30, 1958 letter to former Chairman Cayton to the effect that if a member has been on checkoff, he "is considered eligible if his dues were properly checked off . . . even though received late by the Local Union." It would be particularly unconscionable to adopt any other interpretation in the instant case since the monthly statements which the Local Union submits to employers at the end of each month contain the notation that "dues must be paid by the 10th of the month.".

Moreover, even if there had been proper promulgation of the new Constitutional provisions, the acceptance of the members' dues from their employers by the Local without demanding the payment of one month's dues in advance, constituted a waiver of the requirement of such payment.

Accordingly, the Board of Monitors recommends that General President James R. Hoffa direct the Executive Board of Local Union No. 377 to declare Joseph Larry Carelly, William James Gaw and Joseph Sammartino eligible to run for office.

The above-named nominees have also contested the eligibility of Joseph Blumetti to run for office, on the ground that Mr. Blumetti has never worked at the craft. The Board of Monitors recommends that Mr. Blumetti be ruled eligible inasmuch as it appears that he was a Vice President of Local Union No. 410 at the time of the 1952 convention and hence in accordance with the provisions of Article II, Section 4, of the International Constitution the requirement of having worked at the craft for two years is not applicable to Mr. Blumetti.

Martin F. O'Donoghue
Chairman

Member Wells dissents from that part of the above Order which recommends that Messrs. Carelly, Gaw, and Sammartino be declared eligible to run for office. He will file a dissenting memorandum at a later date.

The majority of the Board also reserves the right to file a memorandum in further support of this Order.

MONITORS
X
X

C O P Y

Law Offices
EDWARD BENNETT WILLIAMS
1000 Hill Bldg.
Washington 6, D. C.

Metropolitan 8-6565

Counsel:
John W. Guider
Colman B. Stein

Edward Bennett Williams
Murdaugh Stuart Madden
Edward T. Cheyfitz
Thomas A. Wadden, Jr.
Charles P. Muldoon
Agnes A. Neill

April 30, 1958

Honorable Nathan Cayton, Chairman
Board of Monitors
4200 Cathedral Avenue, N.W.
Washington 16, D. C.

Dear Judge Cayton:

During our conversation of last Thursday, you suggested that I write to the Board of Monitors setting forth my interpretation of the provisions of the new International Constitution relating to eligibility for office, with particular reference to the requirement of "Good standing".

The pertinent provisions of the International Constitution are as follows:

> Article II, Section 4. To be eligible for election to any office of a Local Union or the International Union a member must be in continuous good standing for a period of two (2) years prior to nomination for said office and myst have worked at the craft as a member for a total period of two (2) years.
>
> Article X, Section 5 (c). All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Where membership dues are being checked off by the employer pursuant to properly executed check off authorization, it shall be the obligation of the member to make one (1) payment of one (1) month's dues in advance to insure his good standing. Thereafter, he shall remain in good standing for each consecutive month for which the monthly check

COPY

> off is made. Any member failing to pay his dues at such time shall not be in good standing.

As you are aware, the provisions of the old Constitution relating to good standing are being very liberally interpreted, particularly for application to trusteed locals in order to facilitate the nomination and election of officers as a step toward the restoration of local autonomy. Under this liboral interpretation, if a member was not under the "check off", he must have paid his dues on or before the first business day of the current month, in advance, for a period of two (2) years prior to the nomination. If, however, he was on "check off" he is considered eligible if his dues were properly checked off for a period of two (2) years prior to nomination or up to April 1, 1958, even though received late by the local union. In effect, for the purposes of "check off", the employer is being considered as the agent of the union and not that of the employee.

Under the language of the new Constitution, there is less room for such a liberal interpretation. A member not on "check off" must pay his dues on or before the first business day of the current month, in advance, for a period of two (2) years prior to nomination; and a member on "check off" must make payment of one (1) month's dues in advance to insure his good standing. Thus, a member on "check off" who fails to make payment of one (1) month's dues in advance is considered not in good standing if his dues are transmitted to the Local Union after the first business day of the current month.

Despite the precise language of the new Constitution, there may, in my opinion, be circumstances in a given case which would excuse a member whose dues are received by the Local Union later than the first business day of the current month. While, of course, each case must be decided on its own facts, the following situations are illustrations of those in which late payment of dues might be excused:

> (1) Where dues are properly checked off in a timely manner and arrive late in the office of the Local Union through the employer's delinquency;
>
> (2) Where illness makes it impossible for a member to pay his dues in advance.

In summary, while every effort will be made to provide for the most widespread eligibility, the provisions of the new Constitution must be followed. Consequently, only under such extonuating circumstances will a member be considered in good standing and eligible for office notwithstanding tardy payment of montly dues.

Very truly yours,

Edward Bennett Williams.
General Counsel

Mon Ex. #32

JOSEPH GRACE
RAYMOND COHEN
EDWARD BATTISFORE
EDWARD WALKER
WALTER J. BAKER
CHARLES O'LEAR
MICHAEL HESSION

V.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA.

C. P. NO.

JUNE TERM, 1958

NO.

COMPLAINT IN EQUITY

Plaintiffs ask equitable relief in the nature of an injunction against the threatened unlawful action of the defendant upon the following cause of action:

1. Plaintiff, Joseph Grace, residing at 3541 Buck Road, Huntingdon Valley, Pennsylvania, is President of Local 107, Philadelphia (hereinafter referred to as the Local) of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

Raymond Cohen, residing at 1605 Brigantine Avenue, Brigantine, New Jersey, is Secretary-Treasurer and Business Manager of the Local.

Edward Battisfore, residing at 207-D Haddon Hills Apt., Crystal Lake, Haddonfield, New Jersey, is Vice President of the Local.

Edward Walker, residing at 628 North Front Street, Philadelphia 23, Pennsylvania, is Recording Secretary of the Local.

Walter J. Baker, residing at 3034 Mesper Street, Philadelphia, Pennsylvania, Charles O'Lear, residing at 9975 Wistaria Street, Philadelphia, Pennsylvania, and Michael Hession, residing at 888 N. Bucknell Street, Philadelphia, Pennsylvania are all Trustees of the said Local, which has its office at 105 Spring Garden Street, Philadelphia, Pennsylvania.

2. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is an unincorporated labor union having its principal headquarters at 100 Indiana Avenue, N.W., Washington, D.C.

3. The defendant International is doing business in the City and County of Philadelphia, the nature of its business being organization of labor unions and supervision of the affairs of existing local unions in accordance with its constitution adopted October 5, 1957, and is represented in Philadelphia by its duly elected International Vice President, John B. Backhus, who resides at 8229 Bayard Street, Philadelphia, Pennsylvania, and whose office is located at 11th and Chew Streets, Philadelphia, Pennsylvania, in the City and County of Philadelphia.

4. By virtue of its Constitution adopted at a Convention held in Miami Beach, Florida, September 30 to October 5, 1957, a contractual relationship exists between the plaintiffs as officers and trustees of the Local on the one hand and the defendant, International on the other, which Constitution, attached hereto, made part hereof, and marked Exhibit "A", grants certain rights to the Plaintiffs, imposes certain obligations upon the defendant International, which rights and duties are hereinafter more specifically referred to.

5. By virtue of a consent order entered January 23, 1958 in the United States District Court for the District of Columbia, in an action captioned "John Cunningham, et al., plaintiff, v. John F. English, et al., defendant, Civil Action 2361-57", the affairs of the defendant International are, in accordance with the terms of the said consent order, subject, in certain respects specified therein, to the supervision of a Board of Monitors composed of three persons, Martin W. O'Donoghue, Godfrey P. Schmidt, and L.N.D. Wells. A copy of the said consent order is attached hereto, made part hereof, and marked

Exhibit "B". The said consent order put into effect the Constitution identified in Paragraph 4, supra, and authorized the said monitors to counsel with the general executive board of the International union with a view to guaranteeing protection of the rights guaranteed to the members of the union by the said Constitution, and to make recommendations on review of appeals taken under the Constitution. The said order gives no other power of recommendation to the monitors and, in particular, does not permit any recommendation outside the framework of the said Constitution.

6. As a result of publicity created by the Select Committee on Improper Activities in the Labor or Management Field of the United States Senate regarding the affairs of the Local as conducted by the plaintiffs, the aforementioned Board of Monitors, in excess of their authority and in violation of their duties under the said consent order, has publicly demanded that the defendant International conduct an investigation of the affairs of the said Local and the defendant International, in response to the said demand has proposed and presently threatens to conduct a hearing on certain charges against the plaintiffs, which were filed with the aforementioned Board of Monitors on or about June 6, 1958. A copy of the said charges, denominated "Charges Against the Officers of Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America", is attached hereto, made a part hereof, and marked Exhibit "C".

7. The defendant International, through its President, James R. Hoffa, has established a hearing panel to consider the said charges, which panel is proposed to consist of Harold J. Gibbons, International Vice President of the defendant, Howard Kline, Secretary-Treasurer of the defendant's Local 773 of Allentown, Pennsylvania, and F. Joseph Donohue, Esq., of Washington, D.C., who is not a member of or affiliated in any way with the International.

8. The defendant International through its President, James R. Hoffa, has established the said hearing panel and proposes to conduct the said investigation and hearing at the recommendation and direction of the Board of Monitors, allegedly in the exercise of powers conferred upon him by Article VI, Section 5 (a) of the aforesaid Constitution.

9. The proposed hearing violates and threatens to violate the rights of plaintiffs under the said Constitution in the following specific respects:

a. The action of the defendant by its President is entirely arbitrary and capricious and violative of the rights of the plaintiffs in that both he and the Board of Monitors have prejudged the merits of the charges against plaintiffs in violation of his duty under Article VI, Section 5 (a) of the said Constitution.

b. The alleged exercise of the general President's power is in excess of his authority under Article VI, Section 5(a) of the Constitution in that he has no reason to believe the affairs of the Union are not being conducted in accordance with the Constitution and for the benefit of the members. On the contrary, he has acknowledged that he has received only seven complaints out of a total of 14,000 members.

c. The action of the defendant by its general President was arbitrary and capricious in that it is not in the interest either of the defendant International or of Local 107 in that the proposed trusteeship would deprive the Local's 14,000 members of their right to the services of their duly elected officers and would deprive them of the right to hold their regularly scheduled election in November in which election, the members would otherwise have the opportunity to judge the merits of plaintiffs conduct on the basis of their records in office.

d. The action of the general President in ordering the investigation and hearing is arbitrary and capricious because it is the result of the unlawful coercion and pressure of the aforesaid Board of Monitors and the aforesaid Senate Select Committee.

e. The coercion and pressure exerted by the Board of Monitors upon the defendant International is in excess of any power granted them in the consent order, inasmuch as the Local and its officers are not parties to the litigation out of which the said order arose and inasmuch as their supervisory jurisdiction exists only with respect to the International and not with respect to any Local affiliated therewith and their powers under the consent order do not include the authority to order, recommend or advise with respect to trials of any individuals connected with this or any other Local or the International.

f. Plaintiff Raymond Cohen, as an international officer, has the right to be tried by the International executive board; all plaintiffs have the right to be tried by agencies specifically designated in the constitution; whereas, the proposed hearing panel in the instant matter is not a constitutionally specified tribunal; in fact, such a panel is unprecedented in the entire history of the International union, and its creation has been prompted solely by the aforementioned unlawful coercion and pressure of the Board of Monitors and the Senate Select Committee.

✓ g. Since September 26, 1957, all of the relevant books and records of the Local from the period January, 1951 to February, 1957 have been in the hands of the aforementioned Senate Select Committee and so remain, and plaintiffs have no access to them, and are therefore unable to defend themselves in the proposed hearing.

✓ h. All of the relevant books and records of the Local from March, 1957 to January, 1958 are in the possession of the Bureau of Internal Revenue, United States Treasury Department, and plaintiffs have no access to them and without them are unable to defend themselves in the proposed hearing.

i. The aforementioned Board of Monitors and the Senate Select Committee have created such widespread, adverse and unfair publicity against plaintiffs and have exerted such improper and undue influence upon the defendant, its officers and agents against the plaintiffs that it is impossible for plaintiffs to obtain from the defendant, its agents or officers, a fair consideration of the merits of their case.

10. The threatened hearing has injured the plaintiffs in the exercise of their duties as officers and trustees of the Local and has adversely affected their ability to bargain collectively on behalf of the members of the Local, has injured and will continue to injure them and their reputation and ability to earn their livelihoods.

11. Plaintiffs have no adequate remedy within the defendant International Union because of the adverse influence alleged in Paragraph 9 (i), supra, and because the same individuals who now threaten the hearing complained of are the ones from whom any redress would have to be sought. Furthermore, the International Convention of the defendant union which would be their only further source of redress, is held in accordance with the Constitution only once each five years, the last one having been held September 30 through October 5, 1957; and the injury to the plaintiffs between the date of this complaint and the date of the next International Convention could not be repaired at so late a time. Furthermore, the threatened action of the defendant is entirely arbitrary, capricious and beyond the scope of, and in violation of the Constitution of the International Union and therefore, plaintiffs are not required to exhaust any remedies within the International Union.

12. Plaintiffs, on June 30 and July 1, 1958, demanded of the General President of the International that they be tried in accordance with the Constitution thereof and the demand has been refused.

WHEREFORE, plaintiffs request that the defendant and its officers and agents be enjoined temporarily and after hearing, permanently, from holding the purported hearing above described which they now threaten, and any other hearing except in accordance with the constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

/s/ John Rogers Carroll
John Rogers Carroll

Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA :
ss.
COUNTY OF PHILADELPHIA :

EDWARD F. WALKER, being duly sworn according to law, deposes and says that he is one of the plaintiffs in the within Complaint and is authorized to make this affidavit on behalf of all of the other plaintiffs and that all of the facts recited in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Sworn to and subscribed :
before me this 10 day :
of July, 1958.

/sgd/ Edward F. Walker
Edward F. Walker

T. BAILEY STINSON
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires February 28, 1958

CHARGES AGAINST THE OFFICERS OF LOCAL 107 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

This action is brought by members of Local 107, through their attorney, Bernard I. Shovlin, against:

JOSEPH GRACE, President

RAYMOND COHEN, Secretary-Treasurer

EDWARD BATTISFORE, Vice-President

EDWARD WALKER, Recording Secretary

WALTER J. BAKER, Trustee

CHARLES O'LEAR, Trustee

MICHAEL HESSION, Trustee

- - - -

1. We contend that your Board of Monitors have jurisdiction to hear the charges brought by and preferred by the undersigned, all members in good standing of Local 107, under paragraph three (3) of the Consent Decree entered by the Honorable F. Dickinson Letts in the U. S. District Court of the District of Columbia, Civil Act. No. 2361-1957, between John Cunningham et al, Plaintiffs and John English, et al, defendants the General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, on January 23, 1958.

2. The Constitution adopted at the Convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America held in Los Angeles, California, October 13 to 17 inclusive, 1952, was at all times hereafter charged in effect and it in law constitutes a contract obligating the members, officers and the business agents as well as the Plaintiffs and Defendants in this action.

3. Under said Constitution, the Plaintiffs and all other members of the Local are granted certain rights among which is the right (which cannot be exercised because of the conduct of the Defendants as hereinafter alleged) to a remedy for the intolerable situation; and lawless or irresponsible conduct hereafter described; and said Constitution imposes certain duties upon the defendants, Officers of Local 107, with respect to their administration of the business and affairs of the Local, which duties the Defendants, as hereinafter appears, repudiated or failed to perform.

4. In furtherance of this common effort or conspiracy to obtain the election of Raymond Cohen as Secretary-Treasurer, the Defendants accepted large sums of money from Local 169 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America contrary to and in violation of the Constitutional provision of Article XIII (Section 2).

5. Purporting to act as members of the Executive Board of Local 107 after their alleged election, the Defendants by intimidation or threats and other forms of coercion, forced the resignation of the following members, duly elected to office, in violation of Article XXI Section (4) of the aforesaid Constitution and in violation of their rights under Article XVIII of the Constitution:

A. William Benkowski, duly elected Vice President;

B. John Fisher, duly elected Business Representative;

C. Harry Tustin, duly elected Business Representative;

D. James Murphy, duly elected Business Representative.

6. The Defendants conspired and permitted the following members to be dismissed as members of Local 107 without a hearing in violation of the Constitution:

A. Raymond Clark

B. William Clark

C. James Lavelle

7. Raymond Cohen and the other defendants did, contrary to the Constitution, conspire and contrive the following illegal acts:

(a) Elected officers, including the Vice-Presidents, without effecting proper notice to the members that an election was to take place.

(b) Appointed Benjamin Lapensohn and Abraham Bierman to hold officers as Business Agents contrary to and in violation of Article II Section (4) of the Constitution, neither of whom were members of Local 107 in good standing.

8. That the Defendants by consent or agreement, specifically the Defendant, Raymond Cohen, misused the sum of Fifteen thousand Dollars ($15,000) in that he, contrary to and in violation of the aforesaid Constitution and without the consent of the members, paid to John Fisher, James J. Murphy and Harry Tustin each Five thousand dollars ($5000) for the purpose of having them each resign from office as duly elected Business Representatives.

9. Defendants did enter into agreements with certain firms and corporations, more particularly Food Fair Inc., United Parcel and other firms or corporations, which allowed persons and/or individuals to be employed by said firms, who were not members of Local 107 or any other Local recognized by the said Executive Board of

International Teamsters, and said individuals performed work and services for said firms or corporations which should have been performed by members of Local 107 which was and is in violation of the Constitution of 1952.

10. Defendants did, and in particular Raymond Cohen, Secretary-Treasurer, and his agent, and co-conspirator, Benjamin Lapensohn, did receive from Food Fair Inc., a corporation under agreement with said Local, gifts in the form of stock, at a price below the prevailing market price, all of which is in violation of the Constitution and is against the interests of the members of that Local and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

11. That the defendant, Raymond Cohen, while acting as Secretary-Treasurer, acted contrary to and in violation of Article II Section 2 (a) and Article XVIII Section 13 (a) of the aforesaid Constitution, in permitting Joseph Cendrowski and Peter Lusko to hold positions of trust and control, though as a matter of public record both have been convicted of crimes.

12. The Defendants contrived, agreed, ordered, tolerated, permitted and condoned violations of the Constitution to occur in that they failed to investigate either within or without of the Union the following known offenses:

(a) Assault and Battery upon Vincent Minisci, a member of Local 107 (who testified before U.S. Senate Select Committee) on or about 5 or 7 June 1954.

(b) Assault and Battery upon said Vincent Minisci on or about October, 1954.

(c) Forgery of a check in the amount of $2500.00 dated April 11, 1956 made payable to David Kanner and signed by Joseph E. Grace and Raymond Cohen, fraudulently endorsed by an unknown person.

(d) Forgery of a check in the amount of $1000.00 dated March 16, 1956 made payable to David Kanner and signed by Joseph E. Grace and Raymond Cohen and fradulently endorsed by an unknown person.

(e) Forgery of a check in the amount of $200.00 dated May 20, 1955 made payable to David Kanner and signed by Joseph E. Grace and Raymond Cohen and fraudulently endorsed by an unknown person or persons.

(f) Forgery of a check in the amount of $150.00 dated June 3, 1955 made payable to David Kanner and signed by Joseph E. Grace and Raymond Cohen and endorsed by someone other than the named payee, said person being unknown to the Plaintiffs or other members of Local 107 and drawn on the Union's funds.

(g) Forgery of a check in the amount of $1000.00 dated 10 January 1956 drawn on the Union's funds and made payable to Joseph E. Katz and signed by Joseph E. Grace and Raymond Cohen, and endorsed by a person other than the named payee and by person or persons unknown to the Plaintiffs, the members of Local 107.

(h) Assault and Battery on Samuel Grovenor, Business Agent, Wilmington, Delaware.

(i) Defendants hired gangsters, racketeers to commit Assault and Battery on one Edward McCormick, a member of the Local in good standing, who is one of the affiants, on June 5, 1958.

The following charges are specifically alleged against Raymond Cohen, Secretary-Treasurer and Business Agent of said Local and General Trustee of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America:

1. In the respects hereinafter set forth, said

Raymond Cohen has violated specific provisions of the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

2. In the respects hereinafter set forth, Cohen has violated his oath of loyalty to Local 107 and to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

3. In the respects hereinafter set forth, said Raymond Cohen has violated his oath of office as an official of Local 107 and as an official of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

4. In the respects hereinafter set forth, said Raymond Cohen has been guilty of conduct unbecoming a union member.

5. In the respects hereinafter set forth, said Raymond Cohen has been guilty as an officer of Local 107 and of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America of gross inefficiency which has hampered and impaired the interests of said Local Union and of the said International Organization.

6. In the respects hereinafter set forth, said Raymond Cohan has been guilty of misappropriation of union property and funds.

7. In the respects hereinafter set forth, said Raymond Cohen has conducted or participated in activities which tend to bring the said Local Union and the International Union into disrepute.

8. In the respects hereinafter set forth, said Raymond Cohen has disobeyed the regulations, rules, mandates and decress of the Local Union and of officials of the International Union.

9. In the respects hereinafter set forth, said Raymond Cohen has been guilty of acts and conduct inconsistent with the duties, obligations and fealty due the membership of a trade union and has violated sound trade union principles.

Specifically, it appears from the sworn testimony before the United States Senate Select Committee on Improper Activities in the Labor or Management Field that:

1. Said Raymond Cohen has refused to answer any questions concerning his increase of net worth in the amount of $46,000.00 during the period when he was Secretary-Treasurer of Local 107.

2. Said Raymond Cohen has, during the period while he was Secretary-Treasurer of Local 107, spent $4000.00 more than his income from any legitimate source.

3. Said Raymond Cohen has misappropriated or failed to explain his use of cash available to him as Secretary-Treasurer from the union treasury in the amount of $50,000.00.

4. Said Raymond Cohen has purchased out of Union funds articles of personal property which he used or acquired as his own property, such as a yacht or boat, a house, etc.

5. During his incumbency as Secretary-Treasurer, said Raymond Cohen has misused or failed to account for $57,000.00 of union funds which accountants have been unable to trace and which Cohen has been unwilling to explain.

6. During the period of his incumbency as Secretary-Treasurer, said Raymond Cohen has misappropriated to his own personal use approximately $190,162.00 of union funds.

7. During the period of his incumbency as Secretary-Treasurer, unexplained cash disbursements totaling $250,000.00 came out of the union treasury and the said Mr.

Cohen has been unwilling to explain such disbursements.

8. During the recent Miami convention, Mr. Cohen authorized or permitted, without the consent of the membership, the expenditure of $31,000.00 for delegates to said Miami Convention and Mr. Cohen has refused to explain such expenditures.

9. Lists of strike benefits and similar expenditures prepared by or with the permission of Mr. Cohen during his incumbency as Secretary-Treasurer are characterized by numerous and serious forgeries giving rise to unmistakable inferences of embezzlement, all of which Mr. Cohen has refused to explain.

10. During the incumbency of Mr. Cohen as Secretary-Treasurer, persons who opposed Mr. Cohen were subjected to threats, violence and beatings for which Mr. Cohen, when questioned, refused to give any explanation.

11. During his incumbency as an official of Local 107, Mr. Cohen participated in a relationship with one Benjamin Lapensohn and in contract negotiations with Food Fair which indicated, at the very least, undue and improper influence, and, at the most, bribery and extortion.

12. The said Raymond Cohen, by having recourse to the privilege against self-incrimination, refused to explain the conduct of his union stewardship and has thus violated the fiduciary relationship that should exist between a union official, the union and the union membership.

13. The undersigned are prepared to submit proof of the items hereinbefore set forth and that much of the proof of these items is available to the Monitors, to the International Organization, and to its officers through the hearings of the McClellan Committee.

We, therefore, pray that your Board of Monitors accept jurisdiction of our charges and we pray that for the welfare of the Local, its members and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as well as the good of the United States, that Raymond Cohen be dismissed as officer of Local 107 together with other defendants mentioned.

S.G. John C. Jones
S.G. Edward P. McCormick
S.G. Julius R. Bangent
S.G. Frank Grimm
S.G. Edward Manderson
S.G. William J. Albert
S.G. Carmen Grasso
S.G. William Brunkel
S.G. Charles McDermott
S.G. James Ballentine

BERNARD I. SHOVLIN
Attorney at Law
631 LAND TITLE BUILDING
Philadelphia 10, Pa.

COPY

JOSEPH GRACE : C. P. NO.
RAYMOND COHEN
EDWARD BATTINFORE :
EDWARD WALKER
WALKER J. BAKER :
CHARLES O'LEAR JUNE TERM, 1958
MICHAEL HESSION :

v.
:
INTERNATIONAL BROTHERHOOD OF NO.
TEAMSTERS, CHAUFFEURS, :
WAREHOUSEMEN AND HELPERS OF
AMERICA :

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : ss.

EDWARD WALKER, being duly sworn according to law, deposes and says that he is one of the plaintiffs in the within captioned action and that he is authorized to make this affidavit on behalf of all of the plaintiffs and that on Tuesday, September 9, 1958, the president of the defendant International caused to be delivered to Raymond Cohen, one of the plaintiffs, a letter dated September 8, 1958, a copy of which is attached hereto, in which he states his intention to commence proceedings in connection with the hearing complained of in the complaint herein on September 11, 1958, and that such proceedings are to be commenced in accordance with a recommendation of the Board of Monitors made in a letter to the president of the defendant International from the chairman of the said Board of Monitors dated September 2, 1958, a copy of which is attached hereto, and that said proceedings imminently threaten the rights of the plaintiffs in that:

(a) Both letters show that the president and the Board of Monitors have prejudged the outcome of the investigation and

(b) Plaintiffs, being without their books and records, are unable to defend themselves in the said investigation and if it is permitted to proceed, they will forfeit all possible opportunity to affect its outcome, and

(c) That immediate and irreparable loss and damage will result to plaintiffs before this matter can be heard on notice.

Sworn to and subscribed :
before me this 10 day :
of September, 1958. :

(signed) Edward Walker
Edward Walker

(signed) Bernice Goodman
Notary Public, Philadelphia,
Philadelphia Co.
My commission Expires January 26, 1961

COPY

September 8, 1958

Mr. Raymond Cohen, Sec. Treas.
Teamsters Local Union No. 107
105 Spring Garden Street
Philadelphia, Penna.

Dear Sir and Brother:

Enclosed is a copy of the Price Waterhouse report on the audit of the books of Local 107 and a copy of a letter from the Board of Monitors, dated September 2, 1958.

This is to advise that on Thursday, September 11, 1958, a panel, as proposed by the Board of Monitors, will be in Philadelphia to conduct a preliminary investigation. Based upon the report of this panel, charges will be filed against you and the officers of your Local with the purpose of placing Local 107 in trusteeship.

The composition of this panel is as follows: Harold J. Gibbons, International Vice President, Howard Kline of Local 773, and at the request of the Board of Monitors the outside public member, F. Joseph Donohue of the District of Columbia.

Fraternally yours,

(signed) James R. Hoffa

James R. Hoffa
General President

COPY

September 2, 1958

Mr. James R. Hoffa
General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N. W.
Washington 1, D. C.

Dear Mr. Hoffa:

Enclosed is a copy of the Price Waterhouse Report on Local Union No. 107, Philadelphia, Pennsylvania.

In accordance with the provisions of Order of Recommendation No. 4 and my letter of July 8, 1958, addressed to you, the Board of Monitors recommends that by September 15, 1958 the International Union file charges against Local 107 in accordance with the provisions of Article VI, Section 5(a) of the International Constitution, that by September 15, 1958 a copy of the charges be furnished to the Monitors, and that by October 1, 1958 a hearing be conducted on the charges.

It is also recommended that the charges be based upon the complaints filed by the Rank and File Committee of Local 107, the evidence developed by the Senate Select Committee and the enclosed Price Waterhouse report. Mr. Theodore Herz of Price Waterhouse and Company has expressed his willingness to assist whomever you designate to draw up the charges.

Very truly yours,

(signed) Martin F. O'Donoghue

Martin F. O'Donoghue
Chairman

Enclosure

JOSEPH GRACE
RAYMOND COHEN
EDWARD BATTISFORE
EDWARD WALKER
WALTER J. BAKER
CHARLES O'LEAR
MICHAEL HESSION

V.

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS OF
AMERICA.

C. P. NO. 1

JUNE TERM, 1958

NO. 3949

RULE

AND NOW, this tenth day of September, 1958, upon consideration of the within Complaint and affidavit, a rule is hereby granted upon the defendant to show cause why the preliminary injunction prayed should not issue.

RULE RETURNABLE Friday, September 12th, 1958 at 11:00 o'clock A.M., Court Room 246, City Hall, Broad and Market Streets, Philadelphia, Pennsylvania.

/s/ Chudoff
Chudoff, J.

Misc. EL Pe-

COPY

JOSEPH GRACE
RAYMOND COHEN
EDWARD BATTISFORE
EDWARD WALKER
WALKER J. BAKER
CHARLES O'LEAR
MICHAEL HESSION

vs.

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

: COURT OF COMMON PLEAS NO.1

: JUNE TERM, 1958

: NO. 3949

O R D E R

AND NOW, to wit, this 22nd day of September, 1958, after hearing in open court, upon the deposit of security in the sum of Thirty-Five Hundred ($350000) Dollars by the plaintiffs, it is ORDERED and DECREED that PRELIMINARILY until FINAL HEARING AND ADJUDICATION, the Defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousement and Helpers of America are enjoined from proceeding with an investigation for the purposes of determining whether Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be placed in trusteeship.

It is further ORDERED and DECREED that a panel appointed by James R. Hoffa, General President of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, consisting of Harold J. Gibbons, International Vice President, Howard Kline of Local 773, and F. Joseph Donohue of the District of Columbia, are hereby bound by this PRELIMINARY INJUNCTION.

BY THE COURT:

__________________________ J.

LAW OFFICES
EDWARD BENNETT WILLIAMS
[illegible] HILL BUILDING
WASHINGTON 6, D. C.
METROPOLITAN 8-[illegible]

COPY

Mon. Ex 35

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTIN F. O'DONOGHUE, CHAIRMAN
831 TOWER BUILDING
WASHINGTON 5, D. C.

GODFREY P. SCHMIDT
12 EAST 41st STREET
NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

August 18, 1958

Mr. John F. English
General Secretary-Treasurer
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington 1, D.C.

Dear Mr. English:

With respect to the filing of charges against Vice President Owen B. Brennan pursuant to Order of Recommendation No. 17, dated August 15, 1958, I recommend that you secure special outside counsel to advise you in the preparation of the charges, in the gathering of evidence, and in the presentation of the case before the General Executive Board. I make this recommendation to you because Vice President Brennan and General President Hoffa were business associates in managing Mr. Davidson, and, accordingly, it would not be appropriate for the General Counsel or special counsel of the International Union to act as legal adviser to you concerning the charges against Vice President Brennan.

Yours very truly,

Martin F. O'Donoghue

Martin F. O'Donoghue
Chairman
Board of Monitors

M #5

August 26, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Dear Marty:

Reference is made to your Supplemental Order to Order of Recommendation #16 relating to Vice President Owen B. Brennan.

Your Order contemplates that the International employ special outside counsel to process charges against Vice President Brennan. As you must realize, this is an extreme departure from anything which the Teamsters Union has ever done and, indeed, it is at variance with the practice in most other Internationals.

There is nothing in the Teamsters Constitution which contemplates the employment of counsel for such a purpose. In fact, under Article XVIII, Section 1(b), the accused is not entitled to be represented by counsel. It would seem to follow from this provision that it would be manifestly unfair for the Union to be allowed to employ an attorney while that same right was denied the member undergoing trial. Counsel for prosecution or defense in Union hearing procedure would be a precedent clearly at war with the Constitution. Finally, if the employment of an attorney were contemplated by the Constitution, I could not agree that the International was not free to employ counsel of its own choosing or use regularly retained counsel.

In view of the constitutional problem that is presented by your Supplemental Order of Recommendation, the International will defer any action against Brennan until the matter of special outside counsel is resolved.

Very truly yours,

Edward Bennett Williams
General Counsel

RWB:jt

M. #39

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTIN F. O'DONOGHUE, CHAIRMAN
831 TOWER BUILDING
WASHINGTON 5, D. C.

GODFREY P. SCHMIDT
12 EAST 41ST STREET
NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

September 3, 1958

Edward Bennett Williams, Esquire
1000 Hill Building
Washington 6, D. C.

Dear Ed:

This will acknowledge receipt of your letter of August 26, 1958, in which you raise a constitutional problem concerning the employment of special outside counsel, which was recommended by the Board of Monitors in its Supplemental Order to Order of Recommendation No. 16.

To begin with, it should be noted that Article XVIII, Section 1(b), which has reference to the trial of "any member or officer of a Local Union," is not applicable in the instant case, inasmuch as the Monitors have recommended that Vice President Brennan be tried as an International Union officer in accordance with the provisions of Article XVIII, Section 3(d). In any event, Section 1(b) provides that the accused is not entitled to be represented by counsel; it does not provide that counsel may not be retained to advise the accused and the member of the Local Union who might represent the accused. The Board of Monitors did not mean to imply by its Supplemental Order that the special counsel should present the case against Vice President Brennan before the General Executive Board, but rather that the counsel should serve as an advisor to the charging party. Finally, it would be inappropriate for the International to employ counsel of its own choosing or to use regularly retained counsel because, as the case develops, General President Hoffa, who was a business associate of Vice President Brennan in managing Mr. Davidson, may be implicated in the misappropriation of funds.

M #5

August 26, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Dear Marty:

Reference is made to your Supplemental Order to Order of Recommendation #16 relating to Vice President Owen B. Brennan.

Your Order contemplates that the International employ special outside counsel to process charges against Vice President Brennan. As you must realize, this is an extreme departure from anything which the Teamsters Union has ever done and, indeed, it is at variance with the practice in most other Internationals.

There is nothing in the Teamsters Constitution which contemplates the employment of counsel for such a purpose. In fact, under Article XVIII, Section 1(b), the accused is not entitled to be represented by counsel. It would seem to follow from this provision that it would be manifestly unfair for the Union to be allowed to employ an attorney while that same right was denied the member undergoing trial. Counsel for prosecution or defense in Union hearing procedure would be a precedent clearly at war with the Constitution. Finally, if the employment of an attorney were contemplated by the Constitution, I could not agree that the International was not free to employ counsel of its own choosing or use regularly retained counsel.

In view of the constitutional problem that is presented by your Supplemental Order of Recommendation, the International will defer any action against Brennan until the matter of special outside counsel is resolved.

Very truly yours,

Edward Bennett Williams
General Counsel

RWB:jt

M. #39

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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12 EAST 41ST STREET
NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

September 3, 1958

Edward Bennett Williams, Esquire
1000 Hill Building
Washington 6, D. C.

Dear Ed:

This will acknowledge receipt of your letter of August 26, 1958, in which you raise a constitutional problem concerning the employment of special outside counsel, which was recommended by the Board of Monitors in its Supplemental Order to Order of Recommendation No. 16.

To begin with, it should be noted that Article XVIII, Section 1(b), which has reference to the trial of "any member or officer of a Local Union," is not applicable in the instant case, inasmuch as the Monitors have recommended that Vice President Brennan be tried as an International Union officer in accordance with the provisions of Article XVIII, Section 3(d). In any event, Section 1(b) provides that the accused is not entitled to be represented by counsel; it does not provide that counsel may not be retained to advise the accused and the member of the Local Union who might represent the accused. The Board of Monitors did not mean to imply by its Supplemental Order that the special counsel should present the case against Vice President Brennan before the General Executive Board, but rather that the counsel should serve as an advisor to the charging party. Finally, it would be inappropriate for the International to employ counsel of its own choosing or to use regularly retained counsel because, as the case develops, General President Hoffa, who was a business associate of Vice President Brennan in managing Mr. Davidson, may be implicated in the misappropriation of funds.

Accordingly the Board recommends that the International Union comply with the provisions of Order of Recommendation No. 16 and the Supplemental Order thereto.

Sincerely yours,

Marty

Martin F. O'Donoghue
Chairman

x Brennan, Owen B.

Mon. Ef. #10

October 17, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Re: Order of Recommendation #16

Dear Mr. O'Donoghue:

This has reference to your Order of Recommendation #16 relating to charges against Seventh International Vice President Owen B. Brennan. More particularly it refers to your recommendations that I disqualify myself from any participation in this matter and that the International retain counsel to aid in the preparation and presentation of the case.

General Secretary John English and First International Vice President John Conlin are both unwilling to prefer charges against Vice President Brennan. Please be advised, however, that I, as General President, will prefer these charges if you approve my participation in this case. I feel that in a matter as serious as this, particularly when it involves a Vice President of our International Union, the charges are most properly preferred by the General President and I am willing to undertake that responsibility.

I cannot agree, however, to any active participation by an attorney in this case. Our Constitution is clear and it has been standard practice in the past not to allow participation by counsel for either side. There is an unbroken line of precedent to support this position and I do not believe that the International should deviate from this practice in the present case.

If you approve my participation and withdraw your recommendation with regard to counsel, I will file charges as soon as possible upon receipt of your letter.

Very truly yours,

James R. Hoffa
General President

RWB:jt

August 28, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Dear Mr. O'Donoghue:

Receipt is acknowledged of Order of Recommendation #17 relating to Samuel Feldman, the Business Agent of Local #929 in Philadelphia.

On Monday, August 25th, I assumed original jurisdiction under the provisions of Article XVIII, Section 10. I am suspending Feldman forthwith in accordance with your recommendation. Charges will be preferred within the next several days. You will be promptly advised of these charges as soon as they are filed.

Very truly yours,

James R. Hoffa
General President

RWB:jt

m #50

August 27, 1958

Mr. James R. Hoffa, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N. W.
Washington 1, D. C.

Dear Mr. Hoffa:

In accordance with the provisions of Order of Recommendation No. 18, the Board of Monitors requests and recommends that the International Union publish in the September issue of the International Teamster the following material:

> Orders of Recommendation No. 15 through No. 20 including the supplemental orders to No. 16 and No. 19, the various memoranda of Member Wells concerning the issuance of these orders, and the Rules Governing the Conduct of Local Union Nomination Meetings and Elections of Officers, which form a part of Order of Recommendation No. 20.

It is requested and recommended that this material be introduced by the following prefatory statement:

> At its meetings of August 11-14, 1958, the Board of Monitors decided to issue the following Orders of Recommendation:

Very truly yours,

Martin F. O'Donoghue
Chairman

cc: Godfrey P. Schmidt, Esquire
L. N. D. Wells, Jr., Esquire

M. #31

August 27, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Dear Mr. O'Donoghue:

Reference is made to your Order of Recommendation #18 dealing with the publication of Orders of Recommendation and a Monitors' report in The International Teamster and my reply accepting your proposal subject to certain conditions not here material.

Your Order of Recommendation was dated August 18, 1958, and delivered to the International on that date. Publication date for The International Teamster varies monthly between the 15th and the 28th, dependent upon many factors. This month, publication is scheduled toward the end of that period. Notwithstanding this month's slight delay, it would have been impossible to block out sufficient space in the Teamster to comply properly with your recommendation. For that reason, the International is not able to publish your Order of Recommendation in the September issue.

I would suggest, in accordance with my letter, that you designate a representative to meet with our International representative within the next two weeks to discuss matters that you may wish printed in the October issue.

Very truly yours,

James R. Hoffa
General President

RWB:jt

M#37-

September 2, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Re: The International Teamster

Dear Mr. O'Donoghue:

This is in reply to your letter of August 28, 1958, in which you recommend that the September issue of The International Teamster not be printed, assembled or mailed until certain material designated by you has been included. Your letter was apparently in response to my letter of August 27th, in which I advised that publication deadline would render compliance with Order of Recommendation #18 impossible in September.

As you are aware, The International Teamster is the sole link between the International and its general membership and, as such, experience has demonstrated the advisability of keeping the mailing date as uniform as possible each month. Full compliance with your request would have necessitated the printing of at least an additional 3300-3500 words. In terms of pages in the magazine, this would require a minimum of three and a half more pages. To accomplish either an addition or a substitution of three and a half pages at that late stage would have been prohibitively expensive and would have materially delayed the publication of the magazine.

Our magazine normally runs to 32 pages; this month, however, additional material will enlarge the issue to 40 pages. Pages are generally added only in multiples of eight, since the presses at Ransdell normally print the Teamster by "double sheet." The addition of four pages is possible but it requires a more costly printing arrangement. You can readily see how important this cost factor becomes when you realize that 1,300,000 magazines are usually printed.

The substitution of material already approved for publication raises additional problems. Our public relations staff attempts to "balance" the contents of the journal so that each member will find items of interest. This process takes a considerable amount of the time of the magazine's staff. It is simply not possible to delete 10%-15% of the approved proof, the amount equivalent to 3300-3500 words, and maintain a proper balance. Some deleted items would have to be inserted elsewhere, thus creating an almost insoluble problem.

The Teamster was printed on Friday and Saturday, August 29th and 30th. The delay of almost ten days before publication and the incidence of the Labor Day weekend has already caused some delay in membership receipt of the magazine. I cannot sanction a further delay.

Please be advised that the International does not intend to evade its proper responsibilities under the Consent Order, nor does it intend to avoid compliance with the Monitors' Orders of Recommendation issued thereunder, but immediate compliance with Order of Recommendation #18 is not possible. As I stated before, we are ready to discuss the insertion of any material you desire in the October issue.

Very truly yours,

James R. Hoffa
General President

RWB:jt

THE INTERNATIONAL TEAMSTER

OCTOBER 1958

PAGE 5

In Best Interest of Union

IBT CALLS SPECIAL CONVENTION

"The Teamsters General Executive Board voted unanimously September 16 to call a special convention and election of International officers sometime after February 1, 1959.

"'We deem it necessary in the best interest of this International Union' to call such a convention, the Board declared in its resolution.

"The General President and the General Secretary-Treasurer were empowered to 'make such arrangements with respect to time and place as is practicable, subject to confirmation of the General Executive Board.'"

THE INTERNATIONAL TEAMSTER

MARCH 1958

PAGE 4

MEMBERS TAKE NOTICE

"The new Constitution adopted at the Miami convention in September 1957 and now in effect provides, in part, as follows:

> "'All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Where membership dues are being checked off by the employer, pursuant to properly executed checkoff authorization, it shall be the obligation of the member to make one payment of one month's dues in advance to insure his good standing. Thereafter, he shall remain in good standing for each consecutive month for which the monthly check-off is made. Any member failing to pay his dues at such time shall not be in good standing."

"Members, to be in good standing, MUST comply with this section.

"It is particularly applicable to those members who want to run for office, for the Constitution requires that candidates MUST be in good standing."

THE INTERNATIONAL TEAMSTER

NOVEMBER 1958

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Date Set for March 16-18 in Chicago

CONVENTION HINGES ON COURTS

"General Secretary-Treasurer John F. English, addressing the Eastern Conference of Teamsters, charged that O'Donoghue wanted the courts to change the monitorship to a receivership under which O'Donoghue would assume dictatorial powers over the affairs of the International Brotherhood of Teamsters.

"He also indicated that, while the legal status of the Monitors was in doubt, the union had no obligation to pay the hefty bills submitted by the two-man majority on the Board of Monitors.

"Based upon months of experience in trying to cooperate with O'Donoghue and Schmidt to achieve the best interests of the Teamsters Union, top IBT officers charged in speeches around the country that neither O'Donoghue nor Schmidt had the best interests of the union at heart.

"Rather, it was charged, O'Donoghue and Schmidt were 'stooges' of anti-Teamster interests, both inside and outside the labor movement, who desired to weaken and control the IBT from the outside."

PAGE 7

AFL-CIO Discouraged

'WON'T QUIT FIGHT' - HOFFA

"The General President described the Monitor situation as 'tragic' and charged that it was 'brought about by George Meany and Walter Reuther in their anxiety to take over this great International Union.'

"He said that 'unfortunately many of the high officials of this government are part of the conspiracy, if you please, to destroy our organization because we will not conform to the pattern they have cut out.'"

PAGE 10

"Gibbons also charged that Monitor chairman, Martin F. O'Donoghue, is 'a stooge of Meany's who is attempting to do through the Monitors what Meany couldn't accomplish himself.'"

M #57

August 28, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Dear Mr. O'Donoghue:

Receipt is acknowledged of Order of Recommendation #19 and the supplement thereto relating to Glen W. Smith and H. L. Boling, officers of Local #515 in Chattanooga.

On August 15th I was advised that charges within the Local were preferred against Smith and Boling, alleging violations of Article XVIII, Sections 6(4) and 6(10). I was also advised that the trial of these individuals would be held on Monday, August 25th. Upon receipt of this telegram I instructed the Local Union to proceed in accordance with the International Constitution. These actions were all taken prior to the receipt of Order of Recommendation #19.

On Monday, August 25th, I assumed original jurisdiction under the provisions of Article XVIII, Section 10. I am suspending Smith and Boling forthwith in accordance with your recommendation. Charges will be preferred within the next several days. You will be promptly advised of these charges as soon as they are filed.

Very truly yours,

James R. Hoffa
General President

RWB:jt

M #58
25.15
Smith, Glenn W.
Boling, H. L.

STATE OF TENNESSEE
Department of State
JOE C. CARR, Secretary
NASHVILLE 3, TENN.

September 2, 1958

International Brotherhood of Teamsters, Chauffeurs,
Warehousemen, and Helpers of America
Washington, D. C.

Re: Glenn W. Smith, et al
Vs: International Brotherhood of Teamsters, Chauffeurs,
Warehousemen, and Helpers of America

Dear Sirs:

You will take notice that a suit was filed against you in the Court of Chancery, true copies of the subpoena to answer, Injunction, and Order to Sow Cause being enclosed herewith; and you are hereby notified to appear in person or by attorney before the Chanceller holding the Chancery Court of Hamilton County, at the next October Rules of said Court to be held in Chattanooga, on the first Monday of October, 1958, then and there to answer the bill of complaint of Glenn W. Smith and H. E. Boling, a copy of which is herewith issued, and further to do and receive what our Court shall consider in that behalf; and this you shall in no wise omit, under penalty prescribed by law. Herein fail not, and have you then and there this writ.

Given under my hand and seal of office on this the 2nd day of September, 1958.

Very truly yours,

Joe C. Carr

Joe C. Carr
Secretary of State

JCC:ba

GLENN W. SMITH, ET AL

NO. 34873

VS

IN THE CHANCERY COURT
HAMILTON COUNTY, TENNESSEE

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

ORDER TO SHOW CAUSE

TO THE SECRETARY OF THE STATE OF TENNESSEE:

TO INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

By order of R. M. Summitt, Special Chancellor of the Chancery Court, Part II, in and for said state and county, you are hereby ordered to appear before said Court at the Court House in the City of Chattanooga, Tennessee, on the 30th day of September, 1958, to show cause, if any you have, why an injunction should not issue as prayed in the bill styled Glenn W. Smith, et al, vs. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the same remains on file in my office.

Witness my hand at office in the City of Chattanooga, this 28th day of August, 1958.

Carl Baker
CLERK & MASTER

GLENN W. SMITH and
H. L. BOLING

PETITIONERS

VS

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA

DEFENDANT

NO. 34873
CHANCERY COURT
HAMILTON COUNTY
TENNESSEE

PETITION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION

Petitioners, GLENN W. SMITH and H. L. BOLING, would respectfully show unto the Court:

I

That defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a voluntary labor organization consisting of over one million members; that James R. Hoffa is General President of the defendant International Union; that the various members of the International Union are employees and reside in all parts of the United States. The said International Union has official headquarters in Washington, D. C., and is doing business in Hamilton County, Tennessee. Said Union has no agent for service of process as required by Section 20-223 of the Tennessee Code Annotated, therefore, service may be had upon defendant through the Secretary of State.

Union, in good standing, and is also a duly elected president and business manager of Local 515, having been elected by the membership of the said Local in accordance with the International Constitution. H. L. Boling is also a resident of Hamilton County, Tennessee, and a member of Local 515, in good standing, and was duly elected Secretary-Treasurer by the membership in accordance with the International Constitution. Complainants' terms of office do not expire until January 1, 1960.

III

That the International Union is governed by the aforesaid Constitution which sets out completely the laws and rules governing said International Union, its officers, representatives and Local Unions. Local 515 is a chartered Local of defendant International Union. A copy of the Constitution of the International is attached hereto as Exhibit "A", but not for copy in the issuance of process.

IV

Petitioners would show that approximately seven years ago petitioners were serving in the same positions and capacities as they are now serving, having been duly elected by the membership of the Local Union. On or about July 2, 1951, petitioners, upon authorization and approval of Local 515, expended a sum of money for and on behalf of said Local Union. This fact was known, and has been known, by the members of Local 515 and by the U. S. Government since 1951 who made an investigation of the expenditures, as well as by the International who from time to time audits the books of Local 515.

Based upon many loose statements contained in newspaper articles and the wide publicity received as a result of the investigation of the labor unions by the McClellan Committee, which will be more fully referred to hereinafter, charges were preferred by a member of Local 515 under Article 18 of the International Constitution, Exhibit "A", and complainants were charged specifically with violating sub-sections 4 and 10 of Section 1~~5~~6, Article 18 of the International Constitution. The trial was set for August 26, 1958, at 8 P. M. but was postponed for two weeks to give the defendants additional time within which to prepare their defense.

IV

Complainants aver that the 1951 expenditure, after investigation by an agency of the Federal Government, was for all practical purposes forgotten until the past year when a second federal agency, the so-called McClellan Committee of the U. S. Senate began investigation of Labor-Management conditions throughout the United States.

Complainants would further show to the Court that as a result of certain litigation in New York by a few disgruntled members of the Teamsters Union a U. S. District Court approved the appointment of three monitors to supervise the activities of the International Union. Complainants are advised and believe that these monitors have no authority other than to make recommendations to the General President. Complainants allege and charge that the monitors have no authority to act for or in the place of the International General President. The monitors can and have threatened to take any case to the U. S. District Court in New York and request the International President to be removed from office unless he enforces their orders. Based upon such possible action the International President was coerced into telephoning the petitioners on August 29, 1958, and ordering them suspended pending further charges based upon the advice of the monitors.

V

Complainants allege and charge that the above action is in direct violation of the provisions of the International Constitution, Exhibit "A" hereto, and in violation of their rights as members and as elected officers of Local Union 515.

Complainants allege that Article 18, Section 6 of the International Constitution provides for the manner and procedure by which members of Local Unions and elected officers of Local Unions shall be charged with certain offenses, and the manner and by whom said charges shall be heard or tried, and by whom judgment may be rendered.

Complainants would show unto the Court that such charges as aforesaid have been filed and are pending and the same were set down for trial before the Executive Board of Local Union 515 when in violation of the said International Constitution new charges, on order of certain monitors who have no power to give orders, are being filed by James R. Hoffa, International President.

The authority of the International President is purportedly based on the provisions of Section 10 (a) of Article 18 of the Constitution, which can only be exercised when there is a sudden emergency creating a situation imminently dangerous to the welfare of the Local Union or other subordinate body of the International or the International itself.

Complainants aver that Local 515 and the officers of the International Union, as well as the U. S. Government, have known of the incident described in paragraph IV above for over seven years and there could not possibly be any "emergency" at this late date that creates an "imminently dangerous situation" to the Local or to the International. In fact, the Local Union is in excellent condition, being composed of approximately 2000 members compared with only a few hundred members when complainants first became its officers. The Local is fully solvent and owes no debts, so that it is obvious there is no imminent danger and no emergency whatever exists.

VI

Complainants would further show to the Court, based upon the charges now pending in Local 515 against complainants that any party, whether he be the accused or the accuser, has the right of appeal and that if anyone so desires the case can be appealed eventually to the General Executive Board under Article XVII of the International Constitution.

VII

Complainants charge that they could not possibly obtain a fair and impartial trial before the International President under present conditions when he himself is under the pressure and threat of the present monitors who are demanding that he take the aforesaid action by falsely declaring an emergency when no emergency exists. In turn the monitors have threatened to have the International President removed if he fails to carry out their dictates.

Complainants believe and charge that two of the so-called monitors, who are neither members, agents, officers or representatives of the International, have in the past and are now threatening to have the International President removed from office unless he carries out their scheme of depriving these complainants of their constitutional right to due process of law by notice, charge and impartial hearing, as provided by the International Constitution.

VIII

Complainants would further show to the Court that they are elected officers of Local 515 and that if they are removed by the International President in violation of the International Constitution they would suffer irreparable injury, as they have no adequate remedy at law.

PREMISES CONSIDERED, COMPLAINANTS PRAY:

1. That proper process issue and be served on the defendant through the Secretary of State as provided by Section 20-223 of the Tennessee Code Annotated, and the defendant be required to make full answer under oath through its General President, James R. Hoffa.

2. That the defendant, through its General President James R. Hoffa, be required to answer under oath whether he personally made the decision to suspend complainants and to file new charges, or whether the action was taken on the instructions of the monitors or third parties; that he make further answer as to whether an emergency exists concerning complainants as contemplated by Article XVIII, Section 10 (a) of the International Constitution.

3. That pending the final disposition of this cause a temporary restraining order issue prohibiting the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, employees, attorneys and confederates, individually or in combination, and all other persons acting in concert or participation with them, from taking any action in furtherance of its effort to remove complainants from their elective offices, or interferring in any manner with the trial of complainants now pending before the Executive Board of Local 515, or interferring with complainants' membership or the conduct of their duties as business agents of Local 515, as provided under the Constitution of the International; said defendant and other persons shall maintain the status quo of Local 515 as affecting its officers and members until the further orders of this Court.

4. Grant general relief.

THIS IS THE FIRST APPLICATION FOR TEMPORARY RESTRAINING ORDER IN THIS CAUSE.

/s/ Glenn W. Smith

/s/ H. L. Boling
By H. G. B. K. Atty.
PETITIONERS

/s/ King & Huston
King & Huston By H. G. B. K.
Solicitors for Petitioners

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

GLENN W. SMITH, being first duly sworn, makes oath that he has read the foregoing petition and that the facts and statements contained therein are true of his own knowledge, except those made on information and belief and these he believes to be true.

/s/ Glenn W. Smith
Glenn W. Smith

SUBSCRIBED to and sworn before me
this 28th day of August, 1958.

/s/ Nixola Ziegler S E A L
Notary Public

My Commission Expires 10-14-61

TO THE
CLERK AND MASTER:

On the filing of the foregoing petition, and complainants' filing an injunction bond in the penal sum of $500.00, condition as required by law, issue the restraining order as prayed, and order defendant to appear on the 30th day of September, 1958, and show cause why an injunction should not issue in this cause.

THIS 28th day of August, 1958, at 8:45 P.M.

/s/ R. M. Summitt
Special Chancellor Part II.

ENDORSED
Filed Aug 28 19 58
CARL BAKER, Clerk & Master
By Carl Baker D.C. & M.

A TRUE COPY
CARL BAKER, Clerk & Master
By Carl Baker D.C. & M.

NO. 34873

MEMORANDUM OPINION

Complainants have filed a sworn petition setting out certain violations of the International Brotherhood of Teamsters Constitution. These violations as alledged are most serious because they in effect deprive the complainants of their positions in the union and their means of a livelihood in violation of a duly enacted set of laws passed by the Union members themselves. There is an allegation that irreparable injury will be done and that they have no remedy at law, consequently they seek an injunction and a hearing on whether or not the International Brotherhood of Teamsters are proceeding according to the duly passed and enacted Constitution.

The main object of civilized society and the chief purpose of law is to secure to every individual his life, liberty and property. The common law aimed to protect a man's right to his property by punishing the violation of that right. When the Chancery Court was established with its peculiar powers and processes, borrowed largely from the Roman law, it did not undertake so much to punish, as to prevent, the violation of the rights of property and liberty. The Chancery Court laid its mighty hand upon the would-be violator, and commanded him to desist from the wrong he was doing, and refrain from doing the wrong he was threatening, menacing him with both bodily imprisonment and pecuniary punishment if he persisted.

When a matter is in dispute the Chancery Court forbides a party to take the matter or the law in his own hands, especially where there is a Constitution to be a guide.

Much has been said concerning constitutional rights in recent times. This court is a firm believer in Constitutions. This Court is a confimed believer in abiding by a Constitution once it has been adopted by the people and a disbeliever in any quick alteration of a constitution or the interpretation of a constitution just to secure a desired result in a particular instant or case.

The Court is convinced that there is conflict or reasonable disagreement between the complainants and the defendants and that a further hearing by this Court should be had to protect the rights of these parties. As has been heretofore said an injunction may be used to prevent a wrong where irreparable injury may be done without an adequate remedy at law.

The complainants are asking for a restraining order or temporary injunction and a right to later be heard by this Court when all the evidence may be presented.

Since a temporary injunction decides nothing but only allows the parties to come into Court and present their case under their Constitutional Rights, let the injunction issue upon the posting of sufficient bond.

Entered this August 28, 1958.

/s/ R. M. Summitt
Special Chancellor Part II.

ENDORSED
Filed Aug 28 19 58
CARL BAKER, Clerk & Master
By Carl Baker
D. C. & M.

A TRUE COPY
CARL BAKER, Clerk & Master
By Carl Baker
D. C. & M.

SUBPOENA TO ANSWER

STATE OF TENNESSEE

SECRETARY OF THE STATE OF TENNESSEE
To the —*Greeting:*

WE COMMAND YOU TO SUMMON International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

if to be found in your County, to appear in person or by attorney before the Chancellor holding the Chancery Court of Hamilton County, at the next October Rules of said Court to be held in Chattanooga, on the first Monday in October next, then and there to answer the bill of complaint of Glenn W. Smith and H. L. Boling

a copy of which is herewith issued, and further to do and receive what our Court shall consider in that behalf; and this you shall in no wise omit, under penalty prescribed by law. Herein fail not, and have you then and there this writ.

Witness CARL BAKER, Clerk and Master of said Court, at office in the City of Chattanooga, first Monday in June 1958, and in the ______ year of American Independence.

Carl Baker
Clerk and Master

By ______
Deputy Clerk and Master

INJUNCTION

State of Tennessee

To the GOVERNMENT OF THE STATE OF TENNESSEE [illegible]—Greeting:

To International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America

and to their Counsellors, Attorneys, Solicitors and Agents, and each and every one of them Greeting:

WHEREAS, It having been represented to us, in our Court of Chancery at Chatanooga in a certain suit between Glenn W. Smith and H. L. Boling Complainant and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Defendant, on the part of said Complainant, that they have obtained from Honorable R. W. Cummitz, Special Chancellor, an order for this Writ of Injunction to issue, enjoining and restraining and prohibiting the said defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, employees, attorneys and confederates, individually or in combination, and all other persons acting in concert or participation with them, from taking any action in furtherance of its effort to remove complainants from their elective offices, or interferring in any manner with the trial of complainants now pending before the Executive Board of Local 515, or interferring with complainants' membership or the conduct of their duties as business agents of Local 515, as provided under the Constitution of the International; said defendant and other persons shall maintain the status quo of Local 515 as affecting its officers and members until the further orders of this Court.

All as more fully set out in Complainant's Bill, to which reference is here made.

We, therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said parties above named, and all and every person before mentioned, under the penalty prescribed by law, of your and each of your goods, lands and tenements, to be levied to our use; that you and each of you do absolutely desist from doing or attempting to do any of the acts hereinbefore specified as enjoined until hearing of this cause in our said Court of Chancery.

WITNESS, CARL BAKER, Clerk and Master of said Court, at office in Chattanooga, the First Monday in June, 1958

By Carl Baker Clerk and Master.

D. C. & M.

M #54

RULES GOVERNING THE CONDUCT OF LOCAL UNION NOMINATION MEETINGS AND ELECTION OF OFFICERS

1. At least one month prior to the nomination meeting, a meeting shall be conducted for the purpose of voting upon rules for the conduct of the election not inconsistent with the International Constitution and these rules, and for the purpose of electing an Election Committee to supervise the conduct of the election. The Election Committee shall be composed of a chairman and four members, none of whom shall be a candidate in the election.

2. At least twenty (20) days prior to the nomination meeting a list of those members eligible for nomination shall be posted at the local's office and at barns, warehouses and other places of employment where notices of the Local are posted.

3. No person who has been convicted of bribery, extortion, robbery, embezzlement, grand larceny, arson, the obstruction of justice, burglary, or conspiracy to commit any of such crimes, shall be eligible to run for office, unless one year has elapsed subsequent to the restoration of his right to vote in elections held under the laws of the State of his legal residence.

4. Notices of the time and place of the meeting to elect the Election Committee, the nomination meeting, and the election shall be posted at the Local Union's office, at barns and warehouses and other places of employment where notices of the local are posted. Such notices shall also be sent by mail to members of the local union whose addresses are available.

5. If the eligibility of a member to run for office is contested, the question shall be decided by the Election Committee.

within 48 hours. The decision of the Election Committee may be appealed to the General President who shall decide such an appeal within seventy-two (72) hours. The Board of Monitors shall be notified of all such appeals and shall make recommendations to the General President concerning them.

6. Nominations may be made by any member in good standing who attends the nomination meeting. A motion to close nominations shall not be in order until a reasonable opportunity has been afforded for all nominations.

7. Every member in good standing shall have the right to vote.

8. A list of the names and addresses of all members eligible to vote in the election shall be compiled no later than the day of the nomination meeting. This list shall be posted at the Local's office and shall be immediately revised to reflect any changes in eligibility that occur after the day of the nomination meeting. No later than the day following the nomination meeting, a copy of the list of the names and addresses of members then eligible to vote shall be furnished to all candidates.

9. No candidate shall make use of union funds or facilities for his election campaign except on terms of complete equality with all other candidates.

10. Arrangements for the election shall be made and the balloting shall be conducted by the Honest Ballot Association or the American Arbitration Association in those areas where either of ✓ these organizations has facilities to do so.

11. Absentee voting by mail may be authorized by majority vote of the membership. Absentee voting shall be conducted with proper

safeguards by a neutral outside agency, where practicable, or the Election Committee.

12. Each candidate shall have the right to be present himself or have one observer present at all times during the election, including when the votes are cast and when they are tabulated, provided that such observer shall be a member of the Local Union.

13. All nomination and election records, including the minutes of nomination meetings and ballots cast, shall be impounded immediately and shall be preserved for a period of at least one year.

14. Candidates and their observers may challenge the eligibility of voters, and all challenged ballots shall be impounded. Challenges shall be investigated by the Election Committee only if the challenged ballots are sufficient in number to affect the result of the election.

15. Protests concerning the eligibility of voters, and the conduct and validity of the election shall be promptly decided by the Election Committee. The decision of the Election Committee may be appealed to the General President who shall promptly decide such an appeal. The Board of Monitors shall be notified of all such appeals and shall make recommendations to the General President concerning them. Pending the resolution of such protests by the Election Committee and the General President, there shall be no induction of officers.

16. These rules, which are intended to supplement the provisions of the International Constitution and By-Laws concerning safeguards for democratically conducted nomination meetings and elections, shall be effective September 15, 1958.

within 48 hours. The decision of the Election Committee may be appealed to the General President who shall decide such an appeal within seventy-two (72) hours. The Board of Monitors shall be notified of all such appeals and shall make recommendations to the General President concerning them.

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9. No candidate shall make use of union funds or facilities for his election campaign except on terms of complete equality with all other candidates.

10. Arrangements for the election shall be made and the balloting shall be conducted by the Honest Ballot Association or the American Arbitration Association in those areas where either of ✓ these organizations has facilities to do so.

11. Absentee voting by mail may be authorized by majority vote of the membership. Absentee voting shall be conducted with proper

safeguards by a neutral outside agency, where practicable, or the Election Committee.

12. Each candidate shall have the right to be present himself or have one observer present at all times during the election, including when the votes are cast and when they are tabulated, provided that such observer shall be a member of the Local Union.

13. All nomination and election records, including the minutes of nomination meetings and ballots cast, shall be impounded immediately and shall be preserved for a period of at least one year.

14. Candidates and their observers may challenge the eligibility of voters, and all challenged ballots shall be impounded. Challenges shall be investigated by the Election Committee only if the challenged ballots are sufficient in number to affect the result of the election.

15. Protests concerning the eligibility of voters, and the conduct and validity of the election shall be promptly decided by the Election Committee. The decision of the Election Committee may be appealed to the General President who shall promptly decide such an appeal. The Board of Monitors shall be notified of all such appeals and shall make recommendations to the General President concerning them. Pending the resolution of such protests by the Election Committee and the General President, there shall be no induction of officers.

16. These rules, which are intended to supplement the provisions of the International Constitution and By-Laws concerning safeguards for democratically conducted nomination meetings and elections, shall be effective September 15, 1958.

M #60

September 10, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Re: Order of Recommendation #20

Dear Mr. O'Donoghue:

In your Order of Recommendation #20 you have set forth certain rules and requested that I promulgate them to all local unions and recommend their adoption. I have reviewed these rules and I am of the opinion that some of them are in violation of our constitution and that others are unworkable in large local unions. However, before I take any action I intend to discuss these rules with our General Executive Board.

As soon as the Board has had an opportunity to discuss these rules, a committee composed of myself, Thomas E. Flynn and Harold J. Gibbons will be available to meet with the Board of Monitors concerning the adoption of these rules.

Very truly yours,

James R. Hoffa
General President

RWB:jt

Mon: Ex. 63

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTIN F. O'DONOGHUE, CHAIRMAN
831 TOWER BUILDING
WASHINGTON 5, D. C.

GODFREY P. SCHMIDT
12 EAST 41ST STREET
NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

October 24, 1958

MONITORS
Election Rules & By-Laws
X
X

Mr. James R. Hoffa
General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N. W.
Washington 1, D. C.

Dear Mr. Hoffa:

The proposed election rules have been redrafted to incorporate certain suggestions of the Honest Ballot Association. A copy of this new draft is enclosed.

I look forward to discussing with you these election rules and the release of trusteed locals next Friday, October 31.

Yours very truly,
Martin F. O'Donoghue
Martin F. O'Donoghue
Chairman, Board of Monitors

Enclosure

414

RULES GOVERNING THE CONDUCT OF
LOCAL UNION NOMINATION MEETINGS AND ELECTIONS OF OFFICERS

1. At least one month prior to the nomination meeting, a meeting shall be conducted for the purpose of voting upon rules for the conduct of the election not inconsistent with the International Constitution and these rules, and for the purpose of electing an Election Committee. The Election Committee shall be composed of a chairman and four members, none of whom shall be a candidate in the election.

2. At least twenty (20) days prior to the nomination meeting a list of those members eligible for nomination shall be posted at the Local's office and at barns, warehouses and other places of employment where notices of the Local are posted.

3. No person who has been convicted of bribery, extortion, robbery, embezzlement, grand larceny, arson, the obstruction of justice, burglary, or conspiracy to commit any of such crimes, shall be eligible to run for office, unless one year has elapsed subsequent to the restoration of his right to vote in elections held under the laws of the State of his legal residence.

4. Notices of the time and place of the meeting to elect the Election Committee, the nomination meeting, and the election shall be posted at the Local Union's office, at barns and warehouses and other places of employment where notices of the Local are posted. Such notices shall also be sent by mail to members of the Local Union whose addresses are available.

5. If the eligibility of a member to run for office is contested, the question shall be decided by the Election Committee within forty-eight (48) hours. The decision of the Election Committee may be appealed to the General President who shall decide such an appeal within seven (7) days. The Board of Monitors shall be notified of all such appeals and shall make recommendations to the General President concerning them.

6. Nominations may be made by any unsuspended member. A motion to close nominations shall not be in order until a reasonable opportunity has been afforded for all nominations.

7. Every unsuspended member shall have the right to vote, with the exception of any member who has joined, transferred to, or been readmitted or reinstated in, the Local Union during the ninety-day period immediately prior to the election.

8. A list of the names and addresses of all members eligible to vote in the election shall be compiled no later than the day of the nomination meeting. This list shall be posted at the Local's office and shall be immediately revised to reflect any changes in eligibility that occur after the day of the nomination meeting. No later than the day following the nomination meeting, a copy of the list of the names and addresses of members then eligible to vote shall be furnished to all candidates.

9. No candidate shall make use of union funds or facilities for his election campaign except on terms of complete equality with all other candidates.

10. Arrangements for the election shall be made and the balloting shall be supervised by the Honest Ballot Association or the American Arbitration Association if either of these organizations has facilities to do so, or otherwise by some other neutral outside agency where practicable.

11. The Honest Ballot Association or the American Arbitration Association, where engaged, shall have sole authority to appoint tellers, clerks and other necessary election personnel, to determine the make-up and control of the ballots, to set up voting machines, if used, and to make rules governing balloting not inconsistent with the International Constitution, the Local By-laws and these rules.

12. Absentee voting by mail may be authorized by majority vote of the membership. Absentee voting shall be conducted with proper safeguards by a neutral outside agency, where practicable, or the Election Committee.

13. All nomination and election records, including the minutes of nomination meetings and ballots cast, shall be impounded immediately and shall be preserved for a period of at least one year.

14. Candidates and their observers may challenge the eligibility of voters, and all challenged ballots shall be

impounded. Challenges shall be investigated only if the challenged ballots are sufficient in number to affect the result of the election.

15. Protests concerning the eligibility of voters, and the conduct and validity of the election shall be promptly decided by the neutral outside agency, in consultation with the Election Committee, or by the Election Committee, where a neutral outside agency is unavailable. Decisions on protests must be appealed immediately to the General President who shall promptly decide such appeals. The Board of Monitors shall be notified of all such appeals and shall make recommendations to the General President concerning them. Pending the final resolution of such protests, there shall be no induction of officers.

16. Any member convicted of misrepresenting returns, altering, mutilating, or destroying deposited ballots, voting fraudulently or of intimidating others by threats or of denying any member any right in connection with the nomination or election procedures, shall be punished in accordance with the Trial Procedure outlined in the International Constitution. In no case shall the penalty be less than a fine of twenty-five dollars ($25.00), and the member so convicted shall be disqualified for either elective or appointive office within the jurisdiction of the International Union for a period of not less than two (2) years or more than five (5) years.

Exerpts of the minutes Fairbanks meeting, Local Union # 183, December 12, 1957.

Bro. Koph asks if we can dissolve this Local.

Bro. Carr explained that they have the permission of Bro. Brewster to propose this to the membership, and then to the International.

Bro. Carr explains that Pres. Brewster, at our meeting was informed that the Executive Board of Anchorage would be the authorized Board, but we have permission to elect and advisory board which would be able to act on the affairs of the Fairbanks area., and the Executive Board of Anchorage would pass on their decisions if within the rules of the International Constitution.

Bro. Talbot also asked if we would be free of Seattle? Bro. Carr explained that we would.

Bro. Carr explained that the final action taken tonight if favorable would have to be approved by the General President, Dave Beck.

Bro. Economui asked if we could elect our officers tonight?

Bro. Carr explained that we could, explains further that after the meeting of Local 959 Anchorage, he had written a letter to Pres. Beck asking for the consolidation of both locals. If the membership of Local 183 votes to consolidate tonight, Pres Beck will probably order the election and merger at a later date, if he denies the merger than the election of officers will have to take place in each local separately, actually what we are doing is electing officers and merging with the hope that autonomy will be granted. Bro Carr asked if there was any further questions on this matter.

Bro. Carr explained that if officers were nominated tonight and there was no opposition they could be elected as in accordance with the International Constitution. Or if there was opposition for any office the a secret ballot would be required at our next meeting.

Bro. Bob Talbot made the motion which was seconded by Bro. Poorman, as follows: I move that Local # 183 Fairbanks, and Local # 959 Anchorage be consolidated into one Local to be known as Local # 959 for the best interest of all members concerned and that we be given immediate autonomy.

A discussion followed pro ~~and~~ con.

A vote was called for 114 in favor 12 against (5 not voting as the 5 new members did not understand what it was about).

Bro. Williams asked where the officers would be from, Fairbanks or Anchorage?

Bro. Carr said both places.

Bro. Erickson asked if we were assured of getting Local Autonomy for the Local?

Bro. Carr said that we have a good chance, but could not promise anything definite, as the action of the members suspended might have some bearing on the outcome, but he thought that we would be given local autonomy.

Motion made by Bro. Bob Talbot and seconded by Bro. Condurchi as follows: I move that the present officers be elected without opposition to the offices that they now hold, to run within the scope of our International Constitution for the maximum 5 year term allowed by our Constitution.

Bro. Carr asked if anyone had any nomination of any office to make; to please make them now so as to avoid any argument later on.

Bro. De Witt makes a motion that nominations be closed, motion is seconded by Bro. Garner. Carried unanimously.

M #68

October 15, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Re: Order of Recommendation #23

Dear Mr. O'Donoghue:

I acknowledge receipt of Board of Monitors' Order of Recommendation #23.

It is my opinion that your recommendation requires me to violate the express language of the Constitution. Carelly, Gaw, and Sammartino have not retained their good standing as dictated by the express language of the 1957 Constitution. Under these circumstances I cannot direct Local #377 to declare these individuals eligible for nomination and I have no alternative but to decline to follow your recommendation in this regard.

I have transmitted to the officers of Local #377 copies of your Order of Recommendation. If they decide to rule these members eligible I will not interfere with their decision but I cannot direct them to take an action which I consider violative of the Constitution.

Very truly yours,

James R. Hoffa
General President

RWB:jt

[illegible]

Civil Action No. 34,889.

In the United States District Court

For the Northern District of Ohio,
Eastern Division.

ROBERT HIGHAM et al.,

Plaintiffs,

vs.

WILLIAM J. GAW et al.,

Defendants.

COMPLAINT AND ACTION FOR DECLARATORY JUDGMENT AND TEMPORARY INJUNCTION.

(Filed October 24, 1958.)

1. The jurisdiction of this Court is founded upon diversity of citizenship, and the Federal Statutes relating to the regulation and administration of labor unions, involving a substantial Federal question.

2. This is a suit of a civil nature brought under the Federal Declaratory Judgment Act (Title 28, U. S. Code, Sections 2201 and 2202) for a declaratory judgment or decree; and is a case of actual controversy between the plaintiffs and defendants, imposing a real and serious hardship upon the plaintiffs, and plaintiffs have no other adequate remedy at law, all as more fully hereinafter appears.

3. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "International") is an international labor union and a nonprofit organization; Local Union 377 is a local union of said International with its office at Youngstown, Ohio; the plaintiffs herein, namely, Robert Higham, Harry Kaufman, Abraham Schwartz, and Frank Zangara are respectively the President, Recording Secretary, Trustee, and Trustee of said Local Union 377; the defendants William Gaw, Joseph Sammartino and Joseph L. Corelly are members of said Local Union

377; the defendants James R. Hoffa, John English and John Rohrich are respectively the President, Secretary-Treasurer, and a Trustee of the International; the defendants Martin F. O'Donoghue, Godfrey P. Schmidt and L. N. D. Wells, Jr. are Monitors of the International, having been appointed as such by the United States District Court for the District of Columbia on January 31, 1958.

4. This action involves the interpretation of the Constitution of the International with respect to the eligibility of members as officers in Local 377, and the officers of the International herein named as defendants being charged with, and responsible for the administration and enforcement of the provisions of the Constitution of the International and the discipline and conduct of the local unions, have a vital interest in this controversy; the Monitors of the International defendants herein having rendered an opinion, hereinafter referred to, as to the merits of this controversy, have or claim to have an interest in its outcome.

5. At a meeting held by Local Union 377 September 3, 1958 for the purpose of nominating officers for said local, the defendants Gaw, Sammartino, and Corelly were so nominated. The chairman ruled that they were not eligible for office as they were not members in good standing, not having paid one month's dues in advance as required by the Constitution of the International.

6. The pertinent provisions of said Constitution read as follows:

> "Article II, Section 4. To be eligible for election to any office of a Local Union or the International Union a member must be in continuous good standing for a period of two (2) years prior to nomination for said office and must have worked at the craft as a member for a total period of two (2) years."
>
> "Article X, Section 5(c). All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Where membership dues are being checked off by the employer pursuant to properly executed checkoff authorization, it shall be the obligation of the member to make one (1) payment of one (1) month's dues in advance to insure his good standing."

7. At no time did any of the three defendants last named above pay in advance one month's dues. However, they called upon the defendant Monitors for an opinion with respect to their eligi-

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bility as officers and in response thereto, the defendant Monitors, one Monitor dissenting, on October 8, 1958, rendered an opinion to the effect that they were eligible to become officers. The full opinion is marked "Exhibit I," attached hereto, and made a part hereof.

8. Pursuant to the above advisory opinion of said defendant Monitors, said Monitors have ordered an election of officers be held by Local Union 377 with the names of the three defendants last named above on the ballots.

All of which create an actual controversy and impose a real and serious hardship upon the plaintiffs for which they have no adequate remedy at law.

WHEREFORE, plaintiffs pray that a declaratory judgment decree be made and entered herein fixing, determining and declaring the rights, liabilities, duties, responsibilities and legal relations of the parties hereto; that the reciprocal rights, responsibilities and liabilities of the plaintiffs and the defendants William J. Gaw, Joseph Sammartino and Joseph L. Corelly be declared and determined fully in accordance with the pertinent provisions of the Constitution of the International; and plaintiffs further pray that pending the final determination of this case, this Court issue its temporary injunction, enjoining and restraining the defendants herein or any of them from proceeding with the election of officers of Local Union 377; and for such other and further relief as plaintiffs may be entitled to.

/s/ Warren M. Briggs,
Attorney for Plaintiffs.

MEMORANDUM OF MEMBER SCHMIDT CONCERNING THE WRITTEN DISSENT OF MEMBER WELLS FROM ORDERS OF RECOMMENDATION NUMBERED 16 AND 17, VOTED BY A MAJORITY OF THE BOARD OF MONITORS.

My colleague, Mr. Wells, refers in his initial paragraph to the action of the majority of the Board of Monitors in issuing Orders numbered 16 and 17 as a "gross abuse of the Monitors' powers." My own reading of the Consent Order and my knowledge of its history convince me that Mr. Wells is in error when he makes this summary judgment. My interpretation of the Consent Order is bolstered, also, by my knowledge of the intention of the parties who signed it and of the colloquies and discussions which took place during the formulation and execution of the consent order. In addition, it seems to me rather obvious that no one would more eagerly resort to the Court to correct a "gross abuse" of the Monitors' authority or a bald usurpation of power by the Monitors, than Mr. Hoffa and his attorneys. The very fact that the latter have never even appealed to the Court, or threatened such an appeal, convinces me that the arguments made by Mr. Wells are not nearly as cogent as his words might suggest.

I have many times repeated orally and in writing that the power of the Monitors to make recommendations is not limited to matters arising under the provisional constitution. It extends more particularly and more directly to the express mandate of the Consent Order and to the fair inferences as to objective and method to be derived from the Consent Order. No objective is in the relevant circumstances, more emphatically an implication of the Consent Order than the purpose to eliminate criminality and corruption (especially criminality and corruption in the officials and leaders of the union) from the International Organization and its subordinate bodies. It is true that the Consent Order contains no express language constituting monitorial empowerment in this connection. The implication of such authority is, nevertheless, emphatic and patent from the very language of the Consent Order and from the factual context against which it must be appraised and out of which it arose. The allegations of the complaint and the revelations of the McClellan Committee constitute the largest mass of this background. Mr. Hoffa, himself, as reported in Part 13 of the Hearings before the Senate Select Committee on Improper Activities in the Labor-Management Field (pages 5223-24) recognized the need and the urgency of purgative action in the following colloquy with Senator Ives:

"SENATOR IVES: * * * Now please pay attention to what I am asking you, Mr. Hoffa, because it is very important. * * * You said that you rather anticipated or intimated you would be president of the International.

MR. HOFFA: From indications around the country, I believe so.

SENATOR IVES: * * * What are you going to do after you are elected, if you are elected? You have consorted with all of these bums and these criminals and everything else throughout your career, practically. Are you going to continue to do that if you are elected President of the International?

MR. HOFFA: I intend to conduct myself in keeping with respectability when I become president of the International Union because I realize, more so than anybody else, that the people who put me in office can take me out of office * * *.

SENATOR IVES: * * * I know what you have been consorting with in the way of people in New York City. I know that isn't doing you any good and isn't doing New York City any good.

MR. HOFFA: And I recognize that.

SENATOR IVES: Or the unions any good.

MR. HOFFA: And I recognize it, sir.

SENATOR IVES: Are you going to do what I asked you to do? This is just between you and me.

MR. HOFFA: I will tell you, Senator, that if I become president of this International, I will accept my responsibilities and deal with the individuals in such a way that they will not bring any harm to the labor movement.

SENATOR IVES: That isn't the question I raised * * *

MR. HOFFA: You are pointing out, Senator, and I want to ask if you mean am I going to run a good union.

SENATOR IVES: That is exactly what I mean.

MR. HOFFA: The answer is absolutely yes.

SENATOR IVES: And you are going to cease having anything to do with this element that you have been dealing with? That is the thing I am interested in * * *

MR. HOFFA: I recognize that responsibility, and the union will be run for the benefit of the members and will be corrected where it needs correcting ***."

In recommending the Consent Order to the Court in Civil Action No. 2361-57, Edward Bennett Williams, as General Counsel for the International Brotherhood of Teamsters praised it as a constructive approach which contrasts sharply and favorably with the numerous indictments and strictures leveled against the union. Judge Letts responded in similar vein. It could hardly be urged that the Consent Order is a constructive approach if it failed to make provision for correction of one of the most obvious defects in the whole Teamster picture, namely, official corruption and criminality.

On August 5, 1958, Mr. Williams, in response to a question from Senator Mundt, gave to the Select Committee his views on the powers of the Monitors. Although, in my view, Mr. Williams did not make a complete enumeration of the Monitors' powers, his interpretation, as far as it went, amply disclosed the empowerment of the Monitors with respect to corrupt and criminal officers, racketeering, and gangsterism within the Teamster movement. Here are Mr. Williams' words with respect to the first of the powers which he listed for Senator Mundt: "The power of the Monitors is given jurisdiction over first of all democratic procedures within the union. They have the right to counsel with and make recommendations to the General Executive Board of the Teamsters on these matters * * *.

"In other words they have been given the jurisdiction * * * to police intra-union democracy."

Obviously, the Monitors could have no genuine jurisdiction to police intra-union democracy if they had no power to eliminate gangster domination and corruption from the union. Racketeering and gangsterism are not compatible with democratic procedures. A power to "counsel with * * * and make recommendations" to the provisional General Executive Board respecting democratic procedures would be ludicrously ineffective were it unable to cope with the obvious obstructions and frustrations of intra-union democracy which gangster domination racketeering, corrupt leadership, and similar defects imply.

The second item in Williams' enumeration of the Monitors' powers was framed in these words: "* * * they (the Monitors) have been given jurisdiction * * * to police financial and accounting controls and procedures of the International." Gangland domination and other forms of official corruption (such as has been revealed by the McClellan Committee and has been demonstrated by the investigations of the Monitors) are always linked with crooked and defective bookeeping and accounting. Indeed, gangs and rackets would be pointless unless there were opportunities for illicit profit. Their very objective is the quick and easy dollar. If the Monitors are given jurisdiction to police financial and accounting procedures and controls, they (it must follow) have the right to police and veto gangster domination control and other corruption in the Teamster union.

The third power mentioned by Mr. Williams he described in these words: "They (the Monitors) are authorized to and they already have made an audit of the International and they are continuing to make other audits at the local levels * * *." The type of audit which we have authorized Price Waterhouse to make for us (without any protest from Mr. Wells) would reveal official corruption and control such as gangsters would dictatorially impose. If there is one thing which corrupt and criminal leaders cannot abide it is a detailed and honest audit of their handling finances and affairs. Therefore, to concede that, we, as Monitors, have the power to authorize audits at the International and at local levels is to concede that we have the power to investigate corruption and criminality which is always linked with crooked finances. And it would be an empty power if we had no right to implement our findings by orders of recommendation.

In the fourth place, according to Mr. Williams, the Monitors "have been empowered to see that no officer of the International has any conflict of interest in the performance of his duties." Here we have an almost explicit admission that the Monitors have the power to curb official corruption and criminality within the Teamster movement. Obviously the most glaring result of racketeers, criminals and corruption in high union positions is precisely that such people put their own private aggrandizement above their duty as union officials.

Finally, Mr. Williams admitted that the Monitors "are authorized and empowered to look into the situation of trusteed locals." Obviously, we would have a rather silly and inept power, if it were confined merely to looking into a situation. The fair inference is that having looked, we do more than take a deep breath and go to sleep. The total situation of a trusteed local involves everything that has a bearing upon proper or improper functioning of that local. It certainly includes racketeering, corruption, criminality and other forms of roguery.

Let me conclude these general observations with respect to the consent order by referring to a document entitled "Thirteen Points from the Thirteen Teamsters Rank and File Committee," copy of which I have added to this memorandum as an Appendix. This document was prepared by me in conjunction with the Rank and File Committee early in February, 1958. In several important respects it corroborates the interpretation which I have been urging in this memorandum.

Now let me address myself to the specific reasons upon the basis of which Mr. Wells argues that the majority action is a "gross abuse" of the Monitors' powers.

(1) He states that "Each order recites as a fact matters which at the present time have not been established." This erroneous conclusion Mr. Wells attempts to establish by citing two examples.

In the first place he says that "The order with respect to Brennan recites as a fact the story which a professional prize fighter gave to the Senate Select Committee with respect to the alleged wrongdoings of Brennan." Actually, Order of Recommendation No. 16 recites only part of Mr. Embrel Davidson's story, and not the full story as Mr. Wells seems to suggest. Moreover, Order of Recommendation No. 16 does not recite this as a fact merely because it came from the testimony of Mr. Davidson, boxer. The entire testimony given before the Senate Select Committee August 6 and 7, constitutes the basis for Order of Recommendation No. 16. That includes Vice President Brennan's resort to the Fifth Amendment when questioned concerning his relationship with Mr. Davidson. It also includes Mr. Hoffa's offer to reimburse the union trust fund from which Davidson's salary was taken. Such an offer would never have been made, if there were no foundation for it.

In the second place, Mr. Wells, on a very flimsy basis, states that "It would appear that the prizefighter's testimony before the Committee varied from the account which the prize fighter originally furnished the investigation." Here Mr. Wells not only contradicts himself, but misses the whole point. In the first place Mr. Wells cites as a basis for this conclusion unsworn heresay twice removed from direct testimony.

If he objects to our reliance upon the sworn record before the McClellan Committee, I cannot understand why he tolerates his own reliance upon unsworn hearsay. I think Mr. Wells misses the point because he is in effect stating that the Monitors should adopt a policy of inaction when confronted with the provocation and the challenge presented by the testimony before the Senate Select Committee on August 6 and 7. I cannot agree with such a policy. Only corrupt labor leaders would be passive before such challenge and provocation. Since Hoffa and his associates apparently want to be passive in these circumstances, and since their consciences are apparently blunted to the point where they do not even perceive the provocation and the challenge, our Monitorial recommendation must take the place of their defective consciences. Section III of the Consent Order imposes upon the Monitors the duty to counsel with the General Executive Board of the International Brotherhood. While the purpose of such counseling is stated in the Consent Order, no express limit is placed by the Consent Order upon the area of counseling. Since we are counseling labor leaders, we have a right to recommend to those leaders any action or policy proper and advisable for intelligent and honorable labor leaders in similar circumstances. The only unexpressed limitation which the Order places upon our power to counsel is the limitation implicit in the fact that we are advising or consulting with labor leaders, not astronomers or bankers or architects. We have a right to expect or to recommend that Hoffa and his associates act as intelligent and honorable labor leaders. If they do not, we must seek enforcement of our recommendations that they do. The testimony of Hoffa, Brennan and Davidson, as given on August 6 and 7 before the Senate Select Committee, would provoke any good labor leader to prompt and summary action of the kind that we are recommending.

(2) Mr. Wells' second critique of Orders of Recommendation No. 16 and 17, was: "Each order requires, without a hearing, that the named individual relinquish union office forthwith, pending final decision on charges which never have been filed.

"Such procedure finds no basis in either the union constitution or the court order. It smacks of the totalitarian method by which the defendant is beheaded, and trial then held to ascertain whether there was a basis for the execution."

Mr. Wells betrays that he has not researched the union constitution carefully enough. For example, Article XVIII, Section 1(d) gives to the General President, "if he deems it advisable," the power to "immediately suspend such member or officer from membership or office in the local union until a decision has been rendered * * *"; and the president is permitted to exercise this power upon the mere "filing" of charges "if the same are of such magnitude and seriousness as to jeopardize the interests of the Local Union or the International Union." Likewise, in Article VI, Section 5(a) of the provisional constitution, the General President has the power to establish a temporary trusteeship, "where, in the judgment of the general president * * * an emergency situation exists"; and such trusteeship can be imposed upon a local union prior to any hearing. Not long ago Mr. Hoffa exercised this summary power to eliminate his enemy, Mr. William Mills.

It would be a commonplace and accepted precaution for a bank president to suspend a bank teller indicted for embezzlement forthwith and without hearing pending final decision on the indictment. American jurisprudence frequently provides summary remedies prior to hearings. A taxpayer must pay his taxes first and argue about them afterwards. A court injunction must usually be obeyed first and only afterwards can its validity be argued in many instances. Of course, Mr. Wells' ludicrous caricature of our order as "totalitarian" is based upon a gory but very inappropriate analogy. A man who is beheaded first and tried afterwards can never afterwards be made whole. A man who is suspended from office temporarily is not deprived of the opportunity of living until he exonerates himself; and if he is able to exonerate himself, he can be made whole. A Teamster official who has paid or defended the payment of $143,000 to Teamster officials incarcerated for crimes like extortion will hardly be prevented from making Mr. Brennan whole in the (unlikely) event that he testifies honestly and responsibly and thereby justifies the diversion of union trust funds to a pugilist managed by Hoffa and Brennan.

Mr. Wells again misses the point and extrapolates a false analogy when he writes: "I have no doubt that the Monitors would unanimously and properly intervene should General President Hoffa summarily suspended from office a union member who was distasteful to him on the basis of untested heresay obtained from a public official or the newspapers." Mr. Hoffa's tastes are not so discriminating and delicate (so far as I have been able to observe) as to put any racketeer or gangster (except one who is his enemy) within the Teamster movement in jeopardy of summary removal. The real point is that the sworn testimony before the McClellan Committee is by no stretch of the imagination merely untested heresay drawn from a public official or from newspapers. Unless there were at least prima facie merit to the testimony of Mr. Embrel Davidson, I cannot conceive why Mr.

Brennan would, in such cowardly and complete fashion, have recourse to the Fifth Amendment. Nor can I understand why Mr. Hoffa would want to offer to reimburse the union trust fund.

Mr. Wells further misses the point when he says: "The procedures of due process which were included in our letter of March 5, 1958 in connection with Local Union 327, we were writing rules for intra-union trials based on charges." We were not writing rules which would restrict our powers of Monitorship and our duty to counsel and to make recommendations. Moreover, Mr. Wells would have been the first to object if I had construed the due process procedures of that letter (which was largely of my own authorship) as constituting an implied repeal of those portions of the provisional Constitution which authorized summary action without trial or hearing. (Article VI, Section 5(a) and Article XVIII, Section 1(d).) Indeed, it would be as logical to argue that these sections of the Constitution are repealed because of the intra-union procedures prescribed by Sections 1(a), 1(b), and 6 of Article XVIII. The point is that the existence of basic procedures ordinarily applicable to the presentation and trial of charges does not derogate from the need and advisability of summary procedures in serious situations warranting the Monitors' recommendation of the use of such summary procedures. As a matter of law it never has been held that the procedures of due process condemn summary suspensions from office. The strange part of Mr. Wells' objection here is that he seems to deprecate a summary suspension of one of Mr. Hoffa's friends, enjoying a high union office, although he has had called to his attention numerous cases of suspensions of rank and file members for whom he has failed to invoke basic procedures and the A.F.L. Code of Ethical Practices.

Mr. Wells finds it difficult to conceive of the extreme emergency which would justify the Monitors in ignoring the union (provisional) constitution, the court Order under which we serve, our own prior actions, and the codes of ethics applicable to A.F.L.-C.I.O. unions. For my part I can conceive of no emergency which would justify the Monitors in ignoring the Consent Order. It was precisely the thesis of Mr. O'Donoghue and myself that we were fulfilling our duty under the Consent Order in approving Orders of Recommendation No. 16 and 17. Indeed, it was our loyalty to the court Order that warrants our disloyalty, from time to time, to the merely provisional union constitution. That constitution never contemplated the Monitorship. Its framers never dreamed that the day would come when the Monitors would be, in a sense, the keepers of the General Executive Board's conscience. Be that as it may, we do not ignore the provisional constitution when we urged summary suspension which that constitution itself authorizes in a number of places. Nor can we be said to ignore the code of basic procedures which I had originally drafted or the A.F.L.-C.I.O. Code in this connection. Those codes were never drafted for the purpose of making summary action or suspension impossible. They were drafted to take care of the ordinary case of charges and the procedures for the trial of charges.

It is a pleasant fantasy which relegates misconduct dated 1948 to 1954 to the limbo of the innocuous. Mr. Wells' views in this connection are slightly myopic. I fail to see why such matters should be regarded as ancient history completely irrelevent to the modern scene, especially since they imply the diversion, continuing to this very day, of $8,000 of union trust funds. That unremedied situation still exists. It is modern, not ancient. The very fact that it continues to exist to the present moment betokens an attitude and a conscience (in Mr. Hoffa) so irresponsible and so callous as to raise a question whether such a leader is appropriate or equal to the task of reforming and rehabilitating the International Union. It is a situation that reminds me of the Nuremberg trials, where some of the judges might well have been in the dock with the Nazis.

3. Nor is it implicit in the Monitors' action that a union member who invokes his rights under the Constitution is presumed guilty. I make no presumption whatever about the legal guilt of Mr. Brennan when he invoked the Fifth Amendment. On that matter I am willing to be guided by the United States Constitution, even though it has been frequently misconstrued by the Supreme Court itself and nowhere more obviously than in the Slochower case. After all, the Fifth Amendment does not guarantee official position to Mr. Brennan or any one else. Whatever may be Mr. Brennan's guilt or innocence, his refusal to explain suspicious intra-union affairs and finances for which he was and is responsible as a fiduciary, is an affront of honest and responsible union leadership. If such a refusal does not, under the United States Constitution, mean guilt, it does mean that Mr. Brennan is unfit to be a labor leader and should be suspended until he is willing to make an honest answer to questions relevant to his stewardship.

Moreover, the sentence which Mr. Wells quotes from the Slochower case is not, as he suggests, a "holding of the U.S. Supreme Court." It is the purest dictum. If it were a holding it would be a judicial venture at thought control. The Supreme Court is certainly within its rights when it states the legal conclusions (pertinent to courts) which may or may not be drawn from invocation of the Fifth Amendment. It has absolutely no right to tell me or any one else what psychological conclusions (pertinent to a labor union's operation) I may draw from the fact that a labor leader refuses to explain an obvious embezzlement. It is bad enough that the Fifth Amendment, which the founding fathers confined by express language to criminal cases, should have been repealed by judicial construction and should have been replaced by a judicial amendment applying it not only to criminal cases but to administrative hearings, legislative hearings, civil actions, etc. It would be tyranous thought control if the Supreme Court were to undertake to tell me or any one else what meaning I shall attach to the exercise by any one of the constitutional right under the Fifth Amendment. I wonder what the provisional officers of the Teamsters union would say if one of the Monitors were to take the Fifth Amendment upon being asked whether they took a bribe in exchange for a recommendation against Hoffa.

4. Mr. Wells contends that the publication of these orders prior to consultation with union officers is contrary to specific commitment made by the unanimous Board to the union officers at the union executive board meeting of July 2, 1958. As a matter of fact, the so-called specific commitment was not Board of Monitor action. Indeed, the only Board action on publicity prior to the meeting of the provisional General Executive Board on July 2 authorized (by majority vote) publication of all Orders of Recommendation.

5. Here again Mr. Wells has entirely missed the point. Our action in issuing Orders of Recommendation No. 16 and 17 is not an action to take a "position on the substantive merits of the alleged activities of Brennan and Feldman." Our recommendation was interlocutary and not final.

It was not our intention to deprive Brennan and Feldman of a chance to defend themselves. Our action contemplates that they may cancel the suspension by valid explanation of what they refused to explain under circumstances calling for an explanation from any honest man.

So far as I remember in each case where Mr. Wells has written his dissent from the view of the majority of the Board of Monitors he has predicated his dissent upon an alleged usurpation of power and authority by the majority, while the majority, reading the same Consent Order by which Mr. Wells tries to guide himself, finds fair inferences and implications of empowerment which Mr. Wells is unable to perceive. I wish, therefore, to propose a solution to the problem posed by this continuing dialectic.

The Consent Order is not subject to misunderstanding or doubt when it provides in Section 2 thereof that "the monitors are at all times * * * subject as officers of the court to supervision and direction of the court in performing" their duties. (Emphasis mine) I propose, therefore, that we apply to the Court for its direction and clarification in order to end, once and for all, this intra-board controversy respecting power and authority. We should ask the Court to rule specifically as to the meaning of the Consent Order in its many implications for the various controversies between the Monitors as raised by Mr. Wells' dissents. Indeed, this clarification is needed for still another purpose. The recent slick and spurious Anti-Racketeering Commission announced by Mr. Hoffa is apparently based upon what I would call the indefensible theory that the Consent Order gives to the Monitors no power to make recommendations for the elimination of criminal, corrupt or gangster domination of, and infiltration in, the Teamster International Organization and its subordinate bodies. While I have little patience with this implausible theory, because I think it is contradicted by many facts and considerations (some of which I have set forth in this memorandum), there is no more authoritative way of dealing with it than by an official interpretation from Judge Letts.

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D. F. #823

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTIN F. O'DONOGHUE, CHAIRMAN
831 TOWER BUILDING
WASHINGTON 5, D. C.

GODFREY P. SCHMIDT
12 EAST 41st STREET
NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1610 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

June 27, 1958

ORDER OF RECOMMENDATION NO. 8

FROM: Martin F. O'Donoghue, Chairman
Board of Monitors

TO: James R. Hoffa, General President
International Brotherhood of Teamsters

RE: LOCAL UNION NO. 282, NEW YORK CITY

The membership of Local 282 of New York City, at the March, April and May meetings, voted for summer meetings to be held because of the pendency of important business of the local union, namely questions dealing with health and welfare coverage and the establishment of a nondiscriminatory hiring hall in order to facilitate all men being equally dispatched for jobs. At the May meeting, the minutes of the March meeting dealing with the holding of summer meetings were again adopted and Vice President McCarthy stated to the membership at this May meeting that meetings would not be held during the summer months.

The Board of Monitors, therefore, recommends to General President James R. Hoffa that the actions of the officers of Local 282, including Vice President O'Rourke, in cancelling or refusing to hold local union meetings during June, July, August and September is illegal and unconstitutional and contrary to the provisions of the Local 282's Constitution, to wit Article VI, Section 1, and the International Constitution, more particularly Article XIV, Section 2(b).

The Board of Monitors also recommends to General President Hoffa that an order be issued directing the officers of Local Union 282, including Vice President O'Rourke, to conduct and hold membership meetings during June, July, August and September in accordance with the wishes of the membership of Local 282 expressed in motions previously adopted at membership meetings.

Martin F. O'Donoghue, Chairman
Board of Monitors

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D. 4.25

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

APPOINTED BY THE UNITED STATES DISTRICT COURT
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June 27, 1958

ORDER OF RECOMMENDATION NO. 9

FROM: Martin F. O'Donoghue, Chairman
Board of Monitors

TO: James R. Hoffa, General President
International Brotherhood of Teamsters

RE: Change of Address and Meeting Place of Board of Monitors

The Board of Monitors recommends to General President James R. Hoffa, that a notice be placed in the Teamster's monthly magazine to the effect that the Board of Monitors' address hereafter will be 831 Tower Building, Washington 5, D. C.

Further, the Board of Monitors desires to advise General President James R. Hoffa that meetings of the Board of Monitors will be held in Room 831, Tower Building, and other meetings from time to time may be held in Room 331 of the Teamsters International Building. That the Board of Monitors at this time expresses appreciation for the use of Room 331.

Mart O'Donoghue
Martin F. O'Donoghue, Chairman
Board of Monitors

THE INTERNATIONAL TEAMSTER

August, 1958 - Page 11

Monitor Address

Martin F. O'Donoghue, chairman of the Board of Monitors, has offices at 831 Tower Building, Washington 5, D. C.

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BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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DALLAS 1, TEXAS

June 27, 1958

ORDER OF RECOMMENDATION NO. 10

FROM: Martin F. O'Donoghue, Chairman
Board of Monitors

TO: James R. Hoffa, General President
International Brotherhood of Teamsters

RE: Local Union 107, Philadelphia, Pennsylvania

The Board of Monitors voted at a meeting held on Monday, June 23, 1958, that General Secretary Treasurer John F. English notify Local Union 107 that the bond of Raymond Cohen, Financial Secretary Treasurer, was cancelled by the Maryland Casualty Company on October 24, 1957, effective 35 days thereafter. The records of the General Office of the International Brotherhood of Teamsters, on June 23, 1958, disclosed that Financial Secretary Cohen of Local 107 had no surety bond as provided by the Constitution.

The record reveals for the past seven months Raymond Cohen has fruitlessly endeavored to secure a surety bond without success. Accordingly, the Board of Monitors recommends to General Secretary Treasurer English that Raymond Cohen, Financial Secretary Treasurer, and Joseph Grace, President of Local 107, place a surety bond in the sum of $50,000, by Monday, June 30, or other suitable collateral as provided by Article X, Section 8(a) of the Constitution; that if Raymond Cohen or Joseph Grace cannot secure surety bond by June 30, they are, in lieu of said surety bond, to place cash collateral in the sum of $25,000 for Raymond Cohen and Cash collateral in the sum of $25,000 for Joseph Grace. In the event that Cohen or Grace fails to place either the surety bond or cash collateral, it is recommended that Article X, Section 8(b) of the Constitution be strictly enforced and that they be automatically removed from office.

Martin F. O'Donoghue, Chairman
Board of Monitors

D#629

July 29, 1958

Mr. A. J. Round, Acting Sec.-Treas.
Teamster Local Union No. 245
1604 E. Kearney Street
Springfield, Missouri

Dear Sir and Brother:

This is to advise you that in conformance with our policy of cooperation with the Monitors, we have agreed to the auditing of your Local's books and records by Price Waterhouse.

We would appreciate your full cooperation with the Auditors in this matter.

Fraternally yours,

James R. Hoffa,
General President

JRH/JK/yk

August 5, 1958

Mr. A. J. Round, Business Representative
Teamsters Local #245
1604 East Kearney Street
Springfield 2, Missouri

Dear Sir and Brother:

The Board of Monitors has proposed that certain local unions be audited by Price Waterhouse and Company, the auditing firm employed by the Monitors to assist them in making recommendations to the International. In accordance with this procedure, a local representative of Price Waterhouse will visit your office shortly to initiate an audit of your books and records. Please show every courtesy to this individual and provide him with all available information and any assistance he may require.

Fraternally yours,

James R. Hoffa
General President

RWB:jt

D# 32

September 11, 1958

Mr. A. J. Round, Bus. Rep.
Teamster Local Union No. 245
1604 East Kearney Street
Springfield 2, Missouri

Dear Sir and Brother:

The Board of Monitors has proposed that certain local unions be audited by Price Waterhouse and Company, the auditing firm employed by the Monitors to assist them in making recommendations to the International. In accordance with this procedure, I am instructing you to cooperate with the representatives of Price Waterhouse on the matter of an audit of your books and records. Please show every courtesy to this individual and provide him with all available information and any assistance he may require.

Fraternally yours,

James R. Hoffa,
General President

Telefax **WESTERN UNION** Telefax

SENDING BLANK

CALL LETTERS MDV 8/12/58 CHARGE TO Int. Bro. of Teamsters

Mr. John J. McNamara, Sec.-Treas.
Teamsters Local Union No. 808
265 W. 14th St.
New York, New York

In accordance with our telephone conversation of last night and pursuant to the recommendations of the Board of Monitors I am requesting you to take a leave of absence as President of Local 295 and Secretary-Treasurer of Local 808 until your appeal now pending in the Supreme Court of New York Appellate Division has been decided.

James R. Hoffa, General President

Send the above message, subject to the terms on back hereof, which are hereby agreed to

PLEASE TYPE OR WRITE PLAINLY WITHIN BORDER—DO NOT FOLD

1269—(R 4-55)

SUPREME COURT, NEW YORK COUNTY

SPECIAL TERM, PART I

-----------------------------------x

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

JOHN J. MCNAMARA

Defendant-Appellant.

-----------------------------------x

GAVAGAN, J.:

Application by the defendant, John J. McNamara, for a certificate of reasonable doubt and for an order admitting said defendant to bail pending appeal is granted. The Court is satisfied that a sufficiently substantial and arguable question is here involved which justified the claim of reasonable doubt as to the validity of the conviction of the crime of extortion as charged.

Extortion is defined in the Penal Law as "the obtaining of property from another *** with his consent, induced by a wrongful use of force or fear or under color of official right". The indictment charged that defendants had obtained moneys from two corporations by threatening to do an unlawful injury to their property, "to wit, to unlawfully cause the continued existence of a picket line at the place of business of the said corporations; to unlawfully prevent the said corporations from receiving necessary deliveries; to unlawfully hinder, impede and interfere with the proper and efficient conduct of the business of the said corporations".

After a very lengthy trial, the prosecutor candidly stated in his summation that there was no circumstance from which the jury could draw the inference that defendant had anything to do with establishing the picket line. But, he argued, and now urges, that defendant is guilty of the crime of extortion because he made use of the picket line and the fear it engendered to coerce payments with personal gain as his object.

But there was no threat by defendant that he would "cause" the continued existence of the picket line, if his suggestion for payment to co-defendant for alleged labor counseling services was not followed. He did not initiate any negotiations. It was the attorney for the corporations who approached defendant and solicited his advice as an experienced union official to help solve their picketing problems. As suggested by the prosecutor, there may have been implications inherent in that advice--and, indeed, even stated by defendant--that the picketing would undoubtedly continue if the corporations did not accept his proposal. However, the evidence indicated that this was based not on a threat by defendant that he would cause the picketing to continue, but rather on his opinion that only acceptance of his co-defendant's services would result in its cessation.

The evidence, in fact, did not prove the specific charges contained in the indictment. The extortion theory advanced by the prosecution at the trial, in view of the failure to connect defendant directly with the picketing, was that he had taken advantage of an existing fear of picketing on the part of the corporations to obtain money from them. The charge of the court submitted to the jury alternative propositions regarding the alleged extortion--threatening the continuance of the picketing as alleged in the indictment or seizing upon the opportunity created by existing picketing as the basis of an illegal demand for personal tribute.

It is unnecessary for present purposes to determine whether the alternative trial theory and the proof thereof are sufficient to establish the statutory requirement of the crime of extortion as defined in our Penal Law. Enough has been shown, the court's opinion, to raise a reasonable doubt as to whether defendant's conviction of the crime charged in the indictment will be affirmed on appeal.

This defendant has no prior record of arrest or conviction. Under all the circumstances, it appears appropriate to permit said defendant to be released on bail pending his appeal in accordance with well settled principles governing an application for a certificate of reasonable doubt, all without prejudice to the people or to the actual determination on appeal.

After consultation with the District Attorney's office and counsel for the defendant, bail is set in the sum of $10,000.00.

Submit order forthwith.

Dated, April 2, 1958.

JSG (signed)
J. S. G.

August 5, 1958

Mr. Michael Burton, Secretary-Treasurer
Teamsters Local #295
Room 501, 215 East 149th Street
New York 55, New York

Dear Sir and Brother:

The Board of Monitors has proposed that certain local unions be audited by Price Waterhouse and Company, the auditing firm employed by the Monitors to assist them in making recommendations to the International. In accordance with this procedure, a local representative of Price Waterhouse will visit your office shortly to initiate an audit of your books and records. Please show every courtesy to this individual and provide him with all available information and any assistance he may require.

Fraternally yours,

James R. Hoffa
General President

RWB:jt

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August 5, 1958

Mr. John S. Mahoney, Secretary-Treasurer
Teamsters Local #808
Room 1101, 265 West 14th Street
New York 11, New York

Dear Sir and Brother:

The Board of Monitors has proposed that certain local unions be audited by Price Waterhouse and Company, the auditing firm employed by the Monitors to assist them in making recommendations to the International. In accordance with this procedure, a local representative of Price Waterhouse will visit your office shortly to initiate an audit of your books and records. Please show every courtesy to this individual and provide him with all available information and any assistance he may require.

Fraternally yours,

James R. Hoffa
General President

RWB:jt

D. E. #338

BOARD OF MONITORS
FOR THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

APPOINTED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTIN F. O'DONOGHUE, CHAIRMAN
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GODFREY P. SCHMIDT
12 EAST 41ST STREET.
NEW YORK 17, NEW YORK

L. N. D. WELLS, JR.
1510 NATIONAL BANKERS LIFE BLDG.
DALLAS 1, TEXAS

July 10, 1958

ORDER OF RECOMMENDATION NO. 13

FROM: MARTIN F. O'DONOGHUE, Chairman
Board of Monitors

TO: JAMES R. HOFFA, General President
International Brotherhood of Teamsters

RE: Non-Commingling of Funds of Local Union No. 183 with
Funds of Local Union No. 959

Inasmuch as the question of the legality of the merger o Local Union No. 183 with Local Union No. 959 is currently before th Board of Monitors, the Board recommends to General President James Hoffa that he order the officers of Local 959 not to commingle the funds of Local 183 with the funds of Local 959.

It is not the intent of this Order of Recommendation that the funds of Local 183 be frozen; it would be understood that the fund s of Local 183 could be drawn upon to pay its pro rata share of the expenses of operating the present Local 959.

It is requested that action be taken on this Order of Recommendation by July 12, 1958, and that the Board of Monitors be notified thereof.

Martin F. O'Donoghue,
Chairman, Board of Monitors

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D. Ex #34

MONITORS ✓

L-183 & 959 - Merger

July 23, 1958

Martin F. O'Donoghue, Esquire
Chairman, Board of Monitors
International Brotherhood of Teamsters
831 Tower Building
Washington 5, D. C.

Dear Mr. O'Donoghue:

On July 10, 1958, you requested that the International order the officers of surviving Local #959 not to commingle with their funds the funds of merged Local #183.

Both our General Counsel and my Executive Assistant suggested an alternative which you agreed would be satisfactory and, at your request, I hereby advise that the following action will be taken if it is ultimately determined that the merger of the two locals was procedurally improper and Local #183 is ordered re-established. At such time the funds in Local #183 at the time of the merger will be returned to that local less its pro rata share of the operating expenses of the combined locals.

I trust this is in accord with the understanding which we previously reached.

Very truly yours,

James R. Hoffa
General President

RWB:jt

August 28, 1958

Registered - Return
Receipt Requested

Mr. Samuel Feldman
Business Agent
Teamsters Local #929
4345 Frankford Avenue
Philadelphia 24, Pennsylvania

Dear Sir and Brother:

At the request of the Board of Monitors and in view of the evidence before the Senate Select Committee that you offered to settle a labor dispute on payment of $50,000, I am suspending you as Business Agent of Local #929 until charges which will be preferred against you can be heard. A copy of these charges will be forwarded to you in the near future.

Fraternally yours,

James R. Hoffa
General President

RWB:jt

450
~~449~~

August 28, 1958

Registered - Return
Receipt Requested

Mr. H. L. Boling
Secretary-Treasurer
Teamsters Local #515
540 Vine Street
Chattanooga 3, Tennessee

Dear Sir and Brother:

At the request of the Board of Monitors and in view of your admission that you used $20,000 of the Union's money in an attempt to "bribe" a local judge in a criminal case, I am forthwith suspending you from the office of Secretary - Treasurer until a determination is made on the charges which will be preferred against you in the very near future. A copy of these charges will be mailed to you as soon as they are available.

Fraternally yours,

James R. Hoffa
General President

RWB:jt

October 10, 1958

Mr. H. L. Boling, Sec'y.-Treas.
Teamsters Local Union No. 515
540 Vine Street
Chattanooga 3, Tennessee

Dear Sir and Brother:

Pursuant to the authority vested in me by the International Constitution, I have assumed emergency jurisdiction over the disposition of charges filed against you by Brother Ralph Eagle of Local Union No. 515, and, in addition, I have suspended you from the office of Secretary-Treasurer of that Local Union. These charges allege violations of Article XVIII, Section 6 by-

1. Gross disloyalty or conduct unbecoming a member in that you participated in the use of funds of Local Union No. 515 to "fix" a criminal case involving officers and members of a Teamster Local Union by bribing a state judge in violation of Article XVIII, Section 6, Subsection (4).

2. Activities which tend to bring your Local Union and the International Union into disrepute in that you participated in the use of funds of Local Union No. 515 to "fix" a criminal case involving officers and members of a Teamster Local Union by bribing a state judge in violation of Article XVIII, Section 6, Subsection (10).

Pursuant to the authority vested in me by the International Constitution, I hereby schedule a hearing on these charges to be held at 10:00 A.M. on Tuesday, October 28, 1958 at the Read House, Chattanooga, Tennessee. This is your official notice of that hearing, and you are invited to be present and make such defense as you deem appropriate. I have appointed a panel who shall conduct this hearing and make a report to me containing findings of fact and their recommendation. On the basis of their report, I will make a decision in this matter which shall be promptly communicated to you.

Fraternally yours,

James R. Hoffa
General President

JRH/ddk
GFT

D #48

GLENN W. SMITH, ET AL

-VS-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ET AL.

NO. 34873
CHANCERY COURT
HAMILTON COUNTY, TENNESSEE

MEMO

Glenn W. Smith and H. L. Boling on August 28, 1958 filed an original bill against the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al seeking to have James R. Hoffa, General President, answer under oath whether he personally made the decision to suspend complainants and file new charges against them. On September 23, 1958 an amended petition was filed making James R. Hoffa, personally, a defendant, but no relief is prayed for.

The bill sets forth, in substance, that on July 2, 1951 complainants expended a sum of money for the Local Teamsters' Union; that this expenditure became the subject of much controversy and investigation by the U. S. Government; that loose statements in the press gave wide publication to the results of the McClellan Committee investigation; and that, for all practical purposes, one Federal agency had forgotten the incident until the past year, when the McClellan Committee began investigating labor-management conditions.

The bill, as framed, by reference, adopts the McClellan Committee newspaper reports concerning complainants of bribery, corruption, intimidation and gross misconduct.

The references to the reports make admissible consideration of the contents which are a matter of common knowledge. No issue is made of the truth or falsity of those accusations, and the Court neither forms nor expresses any opinion of the guilt or innocence of the complainants on the McClellan accusation or the Union charges whatever they may be.

Taking the most favorable view of complainants' bill, the inference to be drawn is that complainants are not guilty of any charges of wrong-doing, including the use of the $20,000.00 expended on behalf of the Union. It would seem, however, that complainants should welcome the opportunity to remove the cloud of suspicion that hangs over them, instead of attempting to bury the casket containing the McClellan Committee releases in the fog of confusion. The Court finds that James R. Hoffa, President of the International Union, was functioning officially when he discharged complainants. Mr. Hoffa's appearance by counsel to resist the granting of the injunction is indicative of the fact that he was and is performing his official duty.

Complainants charge the local union and the United States Government have known of the involved incident for over seven years and took no action. Therefore, no possible emergency exists that would justify the local union or the International in taking any action against them on the basis that there exists an "imminently dangerous situation to the local or the International". One of the grounds set out in the International Constitution for the suspension of officers is conduct that brings the union into disrepute. The recent release of the accusations made by the McClellan Committee are of such a nature as tend to bring the union into disrepute. To deny the application for the injunction it is only necessary that it appear that complainants are subject to trial within the Union.

Complainants are entitled to a full, fair and impartial hearing on the charges that brought about their discharge, but that hearing must take place within the Teamsters Union, a forum friendly to complainants. Public policy requires that the courts leave to the union the settlement of disputes between the union and its members, in accordance with rules, regulations and procedures set up for that purpose in the International Constitution. There was no competent proof introduced that tended to establish the charge that the complainants could not obtain a fair and impartial trial in the Union. On the contrary it appears from the proof that the relationship between Hoffa and complainants and the local union and complainants is friendly, or even cordial.

There is no allegation in the bill which confers upon the court the right, privilege, or authority to grant an injunction.

The injunction heretofore granted by the Special Chancellor is dissolved. Complainants will have thirty days from this date to take and perfect a discretionary appeal.

The decree is to be entered nunc pro tunc.

Chancellor - Part Two

D. X. 55

MEMORANDUM OF MEMBER WELLS

CONCERNING ISSUANCE OF

ORDER OF RECOMMENDATION NO. 20

While I agree that certain of the proposed election rules are proper, others are clearly ill advised, cumbersome and unworkable. For example:

1. Paragraph 3 sets up a standard of eligibility for office contrary to the eligibility requirements of the Union Constitution. The Monitors have no power to thus amend the Union Constitution.

2. Posting of lists of those eligible for nomination requires a check of thousands -- and in some instances hundreds of thousands -- of individual dues payment records wholly unnecessarily. Such checks should be required only of those who indicate willingness to be nominated.

3. Mailing notices to each individual member is unnecessary and will cause inordinate expense in addition to constituting an invitation to election protests. Posting in places of employment and union offices is entirely adequate.

4. Paragraph 15 invites controversy and frivolous challenges, and ignores the experience and procedure of the NLRB whereby eligibility lists are prepared and checked prior to the election and challenges permitted only in limited areas.

Majority promulgation of these election rules without consultation with union officials or NRLB agents experienced in election procedures here results in rules and procedures, parts of which are either:

a. Contrary to the Union Constitution, or
b. Cumbersome, unworkable, and requiring inordinate expense, or
c. Without precedent in any Union Constitution.

Further any election procedures we require may well serve as precedent for adoption by other labor organizations. No labor organization in or out of the AFL-CIO presently follows the rules which the majority suggest. I am doubtful that any would be willing to be bound by such unrealistic procedures. Teamsters should be held to no different standards than other labor organizations.

Finally, specification of identical rules without regard to size, form of organization, type and distribution of membership, availability of election facilities and the myriad practical problems is in my view unrealistic.

Rather than insisting upon such uniform specification we should further consult with those experienced in intra-union and NRLB election problems and procedures, specify general standards, leaving their application in local situations to the union membership subject, in the event of complaint, to prompt review by International officials and the Monitors. I think the majority's refusal to do so and the promulgation of the above Order both beyond our powers and unwise.

[illegible] Trusteeship

March 6, 1958

COPY

Mr. Gene San Soucie, President
Indiana Conference of Teamsters
1233 Shelby Street
Indianapolis 3, Indiana

Dear Sir and Brother:

With further reference to our recent correspondence relating to the trusteeship of Local Union 279, Decatur, Illinois, this will be your authority to proceed with an election and restoration to local self-government of that Local Union.

In conducting the nominations and election you will apply the provisions of Article II, Section 4, and Article X, Section 5(c) to determine whether a member is in good standing. However, in the case of members under checkoff, you will rule those members eligible if they otherwise meet the qualifications, even though under such checkoff their dues arrived at union headquarters later than the first day of the current month.

In other words, if a member has not been under checkoff he must have worked at the craft as a member for a total period of two years and must have paid his dues on or before the first business day of the current month in advance for a period of two years prior to nomination. If a member has been on checkoff he is eligible if he worked at the craft as a member for a total period of two years and if his dues were checked off some time during the current month for a period of two years prior to nomination and up to April 1, 1958.

S 1053—20M—7-55.

The eligibility requirement set forth above applies only to trusteed locals and shall not at any time be applied to any other election in which you may be involved if a trusteed local union is not also involved. Under the new Constitution the provisions of Article X, Section 5(c) shall govern members on checkoff for the month of April and thereafter.

COPY

Fraternally yours,

James R. Hoffa,
General President

JRH/yk

International Brotherhood of
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS *of America*

GEORGE E. MOCK
Eleventh Vice-President

HECKES BUILDING, 831 H STREET
SACRAMENTO 14, CALIFORNIA
TELEPHONE GIlbert 1-2787

August 14, 1958

Mr. James R. Hoffa, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N. W.
Washington 1, D. C.

Re: Amalgamation of Local
Unions 183 and 959,
Territory of Alaska

Dear Sir and Brother:

After full investigation of the subject, it is my opinion here in the form of a recommendation, that the amalgamation of Local Unions 183 and 959 in the Territory of Alaska has increased the efficiency of the local union and facilitated the operation of the Teamster Union's servicing of the membership over the entire area.

During my activities in Alaska I discussed this subject with the Local 959 executive board and with the members, both in groups and individually, and I found that the vast majority of the members and the board agree that the functioning of the local union as it is set up under the amalgamation is a step forward in Teamster operations in the Territory.

There are many factual and practical reasons for this almost unanimous confirmation of the value of the single local to the membership. Among the important aspects of this single operation:

1 Most of the members are working in construction, which necessitates their working on jobs, practically all over the Juneau, Fairbanks and Anchorage areas. The single unit operation precludes their having to transfer from one union to another. This free movement from job to job without red tape or hindrance of any sort simplifies the job change situation for the men.

2 There are only approximately 2700 members under this jurisdiction in the Territory. It is now an established fact that a single local, with union employes assigned to the various focal point areas, can not only operate more efficiently, giving the members more actual service, but also can operate more economically. It is evident that operating costs are noticeably lower than a dual operation would incur in the servicing of a similar

number of workers in the same given areas.

In the overall analysis, the members are getting more service at lower operational cost and at the same time are moving from job to job at less expense and at less inconvenience. These men travel from job to job in small planes flown by bush pilots. The getting around is somewhat difficult in any event and the men appreciate the greater ease of contact with their single local union.

The original action for amalgamation came from the floor. The point of discussion at the time was greater facilitation for the traveling workers. The subject has been discussed at many meetings since and urged repeatedly at these meetings by the majority of the members. The subject matter was gone over thoroughly at the meeting I attended and the sentiment was very, very strong for the amalgamated operation. There is only a very small group in Fairbanks that has been insisting on the two union operation within the jurisdictional area. These men are motivated by personal desires to hold office and control union operations in that area, an area in which a single local union could command, at the most, a membership of from 500 to 800.

It is a matter of record that the vast majority of the workers wanted amalgamation in the first place and that, at the present time, operating under the single union they want the operation continued.

It is my recommendation that the single union operation under Local Union 959 be continued.

Fraternally yours,

George E. Mock

George E. Mock
Vice President

GEM:ky

MR. HOFFA: The meeting will be called to order. The subject before the Executive Board at this time is No. 5 on the agenda, a special call to Convention as per the Court Order. Listening to the discussion of the Monitors, questions and answers on both sides, we are now ready, gentlemen, for the decision, a motion if you please concerning the question of whether or not we shall call or not call a convention. What's your pleasure?

MR. BACKHUS: Resolution.

WHEREAS, the Consent Order provides that a new convention and election of officers shall be held at any time after the expiration of one year from the date of such Order when the General Executive Board, by a majority vote, shall resolve to call and hold such a convention and election; and

WHEREAS, such Consent Order was dated and entered January 31, 1958; and

WHEREAS, the General Executive Board is authorized by the International Constitution to call a special convention when a majority of the General Executive Board deem it necessary; now, therefore be it

RESOLVED, by the General Executive Board of the International Brotherhood of Teamsters in duly called meeting as follows:

1) We deem it necessary in the best interest of this International Union to call a special convention and election of officers as permitted by the Consent Order. Such convention shall be held at such time after February 1, 1959 as it may be practicable to do so and shall be open to the conduct of all business.

2) The General President and the General Secretary-Treasurer may make such arrangements with respect to time and place as is practicable, subject to confirmation of the General Executive Board.

3) In all respects the provisions of the Constitution of the International Brotherhood of Teamsters and the Consent Order, as now in effect, shall be followed.

4) This resolution may be revoked by a majority vote of the General Executive Board.

I move the adoption of this resolution.

VICE PRESIDENT CONLIN: I second the motion.

MR. HOFFA: It has been regularly moved and supported that the resolution read by Vice President Backhus be accepted. Any questions?

Question.

MR. HOFFA: Question being called for, all those in favor raise your hands. All those opposed, if any, raise your hands. It is by unanimous action by the Board.

Order of business has been completed. I there any other special order of business any vice president or the General Secretary-Treasurer cares to bring before the Board before we adjourn?

MR. MOCK: Mr. Chairman, move we adjourn.

MR. HOFFA: Is there a second?

MR. BRENNAN: Support.

MR. HOFFA: Regularly moved and supported that we- that the special called Executive Board meeting be adjourned at 12:00 o'clock p.m. - a.m. Meeting adjourned. Just a minute. Let the record show that all Vice Presidents are in attendance who were in attendance at the beginning of the Executive Board session. Also that Vice President Flynn is in attendance at the meeting, having come in at 8:00 o'clock.

Off the record, Bill.

END OF TAPE

JESSE L. CARR, SECRETARY-TREASURER
P. O. BOX 2092, ANCHORAGE, ALASKA
PHONE 71101

F W Brewster

LOCAL TRUSTEESHIP ✓ ①
959 X 183

INTERNATIONAL BROTHERHOOD OF
Teamsters, Chauffeurs and Helpers of America
LOCAL NO. 959
AFFILIATED WITH THE A.F.L.-C.I.O.

Dec. 6, 1957

Mr. Dave Beck
General President
International Brotherhood of Teamsters,

Re: Consolidation of Local #183,
Fairbanks, into Local #959,
Anchorage, and the granting
of local autonomy to the
consolidated union to be
known as Local # 959

Dear Sir and Brother:

Please consider this a request from the undersigned that you effect, at the earliest practicable date, the consolidation of Local #183, Fairbanks, into Local # 959, Anchorage with the consolidated union being known as Local 959. Please also consider this as a request that the consolidated union, Local 959, be given local autonomy.

It is respectfully submitted that such a consolidation and the granting of local autonomy is in the best interests of the Brotherhood for many reasons, among which are the following:

1. Approval by Bro. Frank Brewster, President, Western Conference of Teamsters. Bro. Frank Brewster, President Western Conference of Teamsters, has recommended the consolidation of the two locals and also the granting of autonomy. As you know, the subject locals are within his jurisdiction and he is fully apprised of the local conditions existing in the Territory of Alaska and all other relevant facts pretaining to both unions and the proposed

merger. It is considered opinion that the requested consolidation and local autonomy are in the best interests of the Brotherhood.

2. Financial Fesibility. As you are aware, both of the subject locals are audited every three months, with copies of the audits furnished to the Trustee, Bro. Fred Verschuern, Jr. An analysis of the financial statements previously submitted by both unions indicates that local 959 is much stronger financially than is Local 183. It is respectfully submitted that if the two locals are not consolidated, the bargaining power and striking ability of Local 183 will be seriously jeopardized because of insufficient local reserves in the event of a hard contest. The Financial condition of Local 959, on the other hand, is very good. If the two locals were consolidated, it is felt that the bargaining ability and stability in generl of the Fairbanks Teamsters would be greatly increased by their ability to draw upon the reserves of Local 959 in the event of emergency. We consider this financial strenght to be advantageous to both locals. It is also respectfully submitted that, due to differences in working season, etc., as hereinafter mentioned, the locals are in a complimentary position financially due to the fact that Anchorage is approximately 400 miles south of Fairbanks and

threrfore somewhat different season of activity, unemployment, etc. than does Fairbanks. As you know, Local 959 also has offices and members as far south as Ketchikan and Juneau. The working seasons and periods of activity are, of course, much more evenly distributed throughout the year in the southern areas than in Fairbanks. Therefore, if the locals are consolidated, this fact will lend strenght to the Brotherhood in Alaska.

3. Local autonomy and responsibility. It is respectfully presented that the policy of the Brotherhood has always been to grant autonomy with all its privileges, responsibilities and duties whenever feasible. It has been a basic principle of our Brotherhood to encourage local responsibility and self determination pursuant to the democratic principles which so long have been practiced and encouraged by our International. We believe that the above principles indicate the justice of our request.

4. Administration. It is respectfully submitted in every manner to cooperate each with the other and join in presenting a united front whenever possible on their mutual problems, which have been numerous. However, due to the fact that the locals are legally separated, the ability to present a united effort and to contribute to each other's welfare is hampered, delayed and made cumbersome by the fact that two entities exist instead of one. As you are aware, the undersigned is presently Secretary- Treasurer of

merger. It is considered opinion that the requested consolidation and local autonomy are in the best interests of the Brotherhood.

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both subject locals. Under such liaison, the two locals have made every effort to meet their common problems. However, the undersigned has found that the existence of two entities makes more difficult the presentation of a united effort on matters of mutual and common concern.

5. Local desire. The brothers of both locals have repeatedly requested local autonomy and desire the consolidation of Local 183 and Local 959. The undersigned has been approached by many of the brothers, indididually and collectively, with such requests. However, the undersigned has always advised that local autonomy could not and should not be granted until the financial position of the locals became such as to assure stability and strength. It is the considered opinion of the undersigned at this time that the locals, if consolidated, will have such stability and strength.

6. Seasonal nature of employment in Alaska. As previously indicated to you in this request, Local 959 extemds as far south as Ketchikan, Alaska and as far north as Anchorage, Alaska and the trade area surrounding the same. The working season is shorter as one goes north. Therefore, there is a very substantial difference in the working season and the seasons of peak activity among Fairbanks, Anchorage and Ketchikan. These differences in the working seasons demand the ready transfer of unemployed brothers from one area to another depending upon the area and season of peak activity at ony particular time. Under existing circumstances, it is impossible for Local 183, Fairbanks, to accommodate its members during the winter months while suffering extreme climatic conditions. It is

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also respectfully submitted that many of the brothers in the Territory are, of necessity, forced to seek employment in whatever area of the Territory which may, at a particular time, be enjoying increased economic activity due to military installations, discovery of gas and oil, construction projects, mining, fishing, timber and new industry.

It is respectfully submitted that the consolidation of the locals will inure greatly to the benefit of the constituent brothers of both and be in the best interests of our Brotherhood.

With best personal regards, I remain,

Fraternally,
Jesse L Carr
Jesse L. Carr,
Secretary - Treasurer

JLC:et

cc Mr. Frank Brewster, President
Western Conference of Teamsters

Mr. Fred Verchuern Jr., Trustee
Local 183, Fairbanks, Alaska and
Local #959 Anchorage, Alaska

TRANSCRIPT OF PROCEEDINGS

Statement of Judge Letts

June 26, 1958

Let us put this thing in its proper light. This decree was not in its truesense the action of the court. It was an agreement between the Plaintiffs in the case and the Defendants. And the question raised here I think must be determined by understanding what was within the contemplation of the parties when they made this agreement, and when they prepared and brought to the Court this consent decree.....

I must look on this more or less like enforcing a contract because it was a consent decree.

TRANSCRIPT OF PROCEEDINGS

November 5, 1958

Statement of Martin F. O'Donoghue

After we issued those orders there came out an anti-racketeering commission; without any notice to the Board of Monitors, without any word, they set up an anti-racketeering commission. That was to be a dual organization along with the Board of Monitors to get into this particular field of attempting to bring about a respite for the terms and conditions of the constitution. Since we were authorized to guarantee the enforcement and protection of individual rights of members, under Section 1 of the decree, I submit the orders that we issue, orders of recommendation, with respect to Brennan, to Smith and Boling, and also to Felman, were legal and proper and within our jurisdiction and within the confines of this order and that the Board of Monitors has the authority and the power to issue such orders of recommendation.

Now, we spent two hours one afternoon in your chambers after the anti-racketeering commission was established. I thought it had gone out of existence. I find yesterday, from a long distance telephone that came from an individual, the racketeering commission is operating; this commission appointed by General President Hoffa. And a letter was sent out under stationery of George H. Bender. He has an office over at 261 Constitution Avenue, Northwest. I am going to read the letter because it is going to show the confusion, and it's the old theory you know, divide and thereby conquer. They are operating in the same sphere as the Board of Monitors.

. . . .

This commission was established after we issued the orders against Brennan, Smith and Boling and against Felman, when we started to take what evidence we had gathered from the McClellan Committee and make these charges. Then this commission is established. Now, follow this, your Honor. While this petition is pending here before you, this very question, I at least thought that there would be no activity by this anti-racketeering commission until this proceeding was finished. But they are operating. There is confusion out in the field. Naturally this letter is going to be read at all local meetings and members' matters that probably would come before the Board of Monitors will now go to the Anti-Racketeering Commission. So, to that extent, there is a weakening of the position in every respect for the Board of Monitors that are operating under a consent decree.

And I might say further, I think it brings this Court decree, and intends to bring it, into disrespect, and even out in front of the public. And, above all, why does anyone need an anti-racketeering commission if you are carrying out the duties of your office? Why do you need it?

……

We employed Price Waterhouse and I called them over yesterday to give me certain exhibits and things out of this Local 107 in Philadelphia. And I asked him whether or not their bills have been paid. And they told me we have gotten bills from them and we have recommended them. We recommended a bill on August 12 of $4,543.16; another bill on August 12, 1958, of twelve hundred-some-odd dollars; another one September 15, '58, for three thousand four hundred-some-odd dollars; another one for September 15, $693. Then on October 6, some $2,000. In other words, they have outstanding bills owed by the International which should be paid under the Court decree of $12,369.80. Now, you know, your Honor, I am not naive. I know this is a slow Japanese death, this type of procedure. They will hold off, they will upset Price Waterhouse. Price Waterhouse will lose interest with the slowing of payment of the bills. And those bills should have been paid immediately. It was work that was done and performed and under the Court decree they should pay it. They are paying $750 a day to the three members of the anti-racketeering commission to tell them to get rid of racketeers and criminals. They can't pay Price Waterhouse under a Court decree to pay the expenses of the auditing, that they consented to. And that is only just a slow measure of upsetting you, keeping the auditors not paid and just slow down the action of the Board of Monitors.

……

I take it that the Board of Monitors, when they draft a model constitution or provisions and they send it up to that president, general president, or to the General Executive Board, that those model provisions should be adopted by local unions. I say it is mandatory. Yes, they should be reasonable, but I submit there may be even times when there is disagreement with them, we will come back to you and you tell us whether they are reasonable or unreasonable. But once we pass them on for their adoption, then they are not just going to pass them to the local unions and say do what you want with them, throw them out the window if you see fit. Their attitude is whatever we send up there they will send to local unions, if local unions vote them down, that is the end of it. Nothing further be done.

Yet I want to call to your Honor these provisions in this constitution: that no local union can adopt by-laws until they are approved by the general president, giving the right of approval in the general president and, since that right exists in him, that right also exists that he can tell them what to adopt and what to put in.

Here it is. Section 4 on page 18 of Article 5. By-laws of local unions and other subordinate bodies and amendments thereto shall be subject to the approval of the general president. If the general president fails to approve the by-laws, the matter may be referred by the subordinate body to the General Executive Board for its determination.

When I appeared before them they were calling me a dictator or implying that I was a dictator, that I was telling them what to do. They wanted to leave us draft by-laws or revisions, send it to them and they send it out to the local union with no compulsion, no mandate to adopt. I submit that under this decree, this constitution is subordinate to this decree, that the by-laws that we adopt and recommend, if they say they are unreasonable, the general president or the General Executive Board, we will come back to you and argue out the provision, whether it is unreasonable or inconsistent with the constitution, and then when that is passed it is mandatory on local unions to adopt them.

. . . .

We had asked that at any time that the Board of Monitors would appear before their General Executive Board that they set an agenda where we could do our homework and we could be of some aid and assistance.

We were told to appear the night of September 16 for one purpose only, to discuss the convention. Then what do we find? We get up there. After meetings and members' matters that probably would come before the Board of Monitors will now go to the Anti-Racketeering Commission. So, to that extent, there is a weakening of the position in every respect for the Board of Monitors that are operating under a consent decree.

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We had asked that at any time that the Board of Monitors would appear before their General Executive Board that they set an agenda where we could do our homework and we could be of some aid and assistance.

We were told to appear the night of September 16 for one purpose only, to discuss the convention. Then what do we find? We get up there. After that is over we are told to sit down at the end of the table. Mr. Hoffa gets at the top with a gavel and he starts going over these rules for election, one after one. Where is it constitutional? Tell me where it is in the constitution. There was no attempt to discuss it objectively or logically, nor was there any respect or deference, not because I am a lawyer. Anything. But at least it was respect for you, and for this Court, that we should have been told this was going to be discussed and it should have been discussed intelligently and objectively. No. And the whole thing, to me, it was a mockery and a farce. I have asked Mr. Williams if he knew these rules of election were going to be discussed that night. He said no, he didn't. I asked Mr. Wells, if he knew they were going to be discussed. He said no, he didn't. I told him, Mr. Schmidt even said to him that it should be discussed.

My point is this: I am still ready and willing to meet with them at any time to discuss them. They tell me that no temporary rules of election for trusteed local or for other locals will be adopted until the model code of by-laws is adopted. That may be six months from now because the model code of by-laws can only be finally written when Price Waterhouse has made their exhaustive study both of auditing for local unions and what is needed and for the manuals that will go out to the independent auditors. In the meantime, we do want experience in seeing how these elections out of these trusteed locals are conducted so that we can at least be able to write from experience what type of by-laws should be drafted.

Statement of Godfrey P. Schmidt

The crucial meeting in the formulation of the consent order was a meeting in Mr. Williams' office on, I think, the 20th of January of this year. Present were Mr. Williams, Mr. Cheyfitz, Mr. Tom Dodd, Mr. Joseph Blumenfeld, Pat Kennedy and John Cunningham, the renegade plaintiff whose chief preoccupation recently has been monstrous ingratitude and perjurous statement in my regard. . . . . But suffice it to say, for the moment, that one of the first questions that came to my mind when they used the word "monitor" was this: I said, What is a monitor? The word "monitor" has no standing in the art of law. Master in equity, receiver, yes. But "monitor" is something that I had never heard of in that connection. And I asked whether or not the monitor, as they conceived it, was a kind of receiver or master in equity, and I was told that was it.

Then I asked what they meant by the provision regarding the power of the monitors to make recommendations. I said that it would be conceivable to me that we as monitors could make recommendations until we were blue in the face and if we relied solely on the untrammeled discretion of Mr. Hoffa and his associates, we might as well talk to the Sphinx on particular things. And they said, oh, well, that wasn't their intention. They understood, and I wrote it down in this memorandum, that we were to have power to come to your Honor, since this action was not ended, and since your Honor as the Court presiding over this proceeding had full power over the monitors.

Now, a third question came up that is relevant to this motion and that was this very question about the continuance of the action and my position, both as a monitor and as a prospective monitor and as counsel for the plaintiffs, I wanted it thoroughly understood, and I emphasized it and no one attending that meeting could have been under any misapprehension about it, that I was not relinquishing my claim that these defendants were usurpers, that they had rigged an election and had contrived their election. I was not consenting to any termination of the action. And all of the parties present agreed to those propositions.

And then, if you will recall, three days afterwards we appeared in your chambers, your Honor, on the 23rd of January is my best recollection, and the very first questions that your Honor asked concerned the two first questions that I initiated at the previous meeting. You wanted to know what a monitor was. That was the first question, and I recall answering you by saying that it was a kind of receiver, because you see, your Honor, if you put yourself back into the situation that existed at that moment you will understand that there were only three alternatives open to me as counsel for the plaintiff. I could either permit Mr. Hoffa to take over de jure office and if I had permitted that I would have conceived the consequences to be disastrous. I wasn't willing to do that. On the other hand, the monitors might have tried to run the Union. Since I was one of the monitors I had no ambition to try to run a union. Furthermore, I don't think I have the qualification to run a union. Therefore, I didn't want the monitors to have absolute power of receivers at that time.

And in between was what we actually agreed on, namely, a situation in which the provisional officers, working under a provisional constitution, were generally speaking to run the Union. They were even to be permitted to take the initiative. But they were subject to the duty to consult with us as monitors and to consider our recommendations and not to reject them arbitrarily or without reason. And I thought nothing was better established than that, and after that very meeting, I should say at that very meeting, your Honor got up from your desk and you went to the left center of your room from where you sit and you pulled down a large volume on receiverships, and you read certain digest material from the cases and as a result of your reading this sentence was added to Section 2 of the Court order, namely: "Furthermore, the monitors are at all times subject to removal by this Court in the exercise of its discretion for any cause, and are subject as officers of the Court to supervision and direction of the Court in performing these duties as hereinafter enumerated."

Statement of L.N.D. Wells, Jr.

From our experience to date, we presently have and perhaps will have other suggestions for even further improvement in procedures, in constitutional provisions; for example, the matter of eligibility for office to which Mr. O'Donoghue adverted. There is a provision with respect to the eligibility for office which, in my personal view, is restrictive and too harsh.

Statement of Edward Bennett Williams

Now, your Honor, I myself, secured counsel. I don't know whether the Chairman knows this or not, for 107. I secured one of the ablest lawyers of this bar to get those books and records back from the McClellan Committee, so that the hearing in Philadelphia could go forward and when all of his implications failed, he finally had to file a suit in this court to get those books and records back, so that a hearing could be conducted in Philadelphia because the people who were charged, were claiming they couldn't defend themselves unless they had their books and records.

MR. O'DONOGHUE: You can stop right there, and if that is all that is stopping the filing of charges, Mr. Kennedy, the counsel of the Select Committee will turn the books over to my possession so that these charges can be filed and hearing had. If you had asked me that before, you could have had them so we could have had the charges filed.

MR. WILLIAMS: I had no knowledge that you had the ability to get things from Mr. Kennedy, that other people can't get. We filed a law suit to get it. (Laughter)

THE COURT: The marshal will maintain order, please.

MR. WILLIAMS: Your Honor, we filed a law suit to get them and I am delighted to accept this offer from the chairman, because as counsel must know, a Court in Philadelphia, over objection of lawyers from the International issued an injunction or a temporary restraining order, restraining the hearing from going forward. The thrust of the position of these charges of the officers was that they didn't have at their command or available to them the books and records of 107 which they needed to defend themselves.

. . . .

With respect, your Honor, first of all to Mr. Feldman in Philadelphia, charges were preferred, a hearing panel was sent to Philadelphia; that hearing has begun. It was adjourned. It is to be concluded on a day certain and the International has complied in all respects with the recommendation of the Board.

With respect to Bolling and Smith in Tennessee, about whom the Chairman said evidence had unfolded before the McClellan Committee that there had been bribery of a State Judge, charges have been preferred.

First, they were preferred at the local level, but an order came out from the Board of Monitors saying they should be preferred at the International level; that has been done. The panel has been dispatched to hear the charges against these men and the hearing has begun. I do not know at this moment whether it is completed. I am only sure that no decision has yet come down from that Board.

Testimony of Martin F. O'Donoghue

MARTIN O'DONOGHUE having been first duly sworn, testified as follows:

.... I am going to first read, may it please the Court, the order of recommendation that was issued on Local 107 and then I will go into the basic documents that are in the files; why we say there is non-compliance. (See Mon. Ex.#6). . . . .

Now, the testimony under oath was revealed before the Senate Select Committee, not only that there was forgeries of various documents and mishandling of funds but, also, that money and stocks passed between a man by the name of Lapensohn and the testimony in the record shows that he was a representative of Local 107 and the officials of Food Fair; namely, that Food Fair was given unlimited drops in dropping freight; whereas, the A&P and American Stores were not given the same concession and that could be a matter that should have been looked into.

There were also allegations of forgeries in cashing of certain checks and also forgeries with respect to increasing the amount of money supposedly paid out on strike benefits. There were two checks; one of them $1,000 and one of $15,000, and they were cashed and used for the payments allegedly of strike benefits. Though there was received before the Senate Select Committee that many have notations and that were increased. Certain individuals stated that they didn't get the money. There were also checks where there were forgeries written out to lawyers and also forgeries on 23 checks signed by Grace and Cohen, payable to Grace, the president.

There were also alleged forgeries of checks to a man by the name of Friedman, and Price, Waterhouse sustained that particular portion of the report. Though as to the net worth assets of Mr. Cohen, they did find contrary to what statements were made by the Senate Select Committee. In view of the serious nature of these charges, it was my belief that an emergency existed and that the general president should have immediately appointed a temporary trustee for Local 107 and I advocated that at the meeting with Mr. Williams, in a sincere effort to establish at the outset of my chairmanship harmonious working relationship with the International Union, and in reliance upon the assurances of the International Union that general counsel, that prompt action would be taken under the ordinary procedure.

The Board of Monitors on June 12, recommended that an ordinary trusteeship proceeding be instituted with the safeguard that the panel contain one public member.

Now, let's get that straight in this record. I recommended that there be a public member put on this panel. As I read the section of the Constitution, there is no question that could be done and the fact of the matter Jerry Traymore, he is a lawyer, he sits on all of their panels appointed for general executive board, and therefore is a member, a lawyer, who is not even a member of the International to sit on it, and I felt that in view of the charges that were levelled against that and in order to get back the esteem of the public that there was going to be a cleanup, that should put a public member on it and have some impartiality there at any rate and to have it done and it was legal and constitutional and it's done every day up there. But, nevertheless, as you will see later, as we get into this what happened.

Now, nothing was done after that, if that is in the sense that they didn't appoint this public member and on July 9, I sent the following wire to President Hoffa: "The Board of Monitors recommends that general president James R. Hoffa immediately send official notice of the appointment to the three members of the panel selected to hear the petition for appointment of a trustee for Local 107. The Board of Monitors also recommends that general president Hoffa set a date for hearing to be held in Philadelphia and request that he notify the Board of Monitors to have that date by July 11, 1958. The Board of Monitors has already sent to general counsel Williams a memorandum concerning the requirements of due process at a hearing to appoint a trustee and in this regard, the Board recommends to general president Hoffa, that written notice of the specific charges and written notice of the date of hearing be given to Local Union 107 and its officers. It is assumed that general counsel Williams will prepare the charges and gather, evaluate and present to the panel the necessary evidence including the report of Price Waterhouse and Company. It is recommended that the charges be based upon the complaint filed by the rank and file committee of Local 107, the evidence developed by the Senate Select Committee and the Price, Waterhouse report."

Now, the Price, Waterhouse report was delayed coming down and it did not come down until about September 2. In the interim before we even had this hearing on

June 13, I had a digest made of the 12 or 13 volumes of the testimony, much of it I read myself, but it is a hundred some odd pages. I gave that to Mr. Wells. I gave one to Mr. Schmidt and I had it and it showed mishandling of funds, drawing of checks to cash and not having the proper subsidiary financial controls and there were a number of forgeries of checks, probably some 40 or 50, plus the so-called evidence of drops being given to Food Fair, plus acts of violence during a strike and because of that, I felt the charges should be filed and we would have Price, Waterhouse get the records from the Senate Committee and make their report; they did that and they sent it to me, and I immediately sent a copy to the International.

Now, I wanted Mr. Williams to take this evidence and to prepare the charges and that was my understanding of what was going to be done against 107 for the putting in of trusteeship and I have the Price, Waterhouse report. What a peculiar thing happened, very striking, under date of September 9; now imagine, after they set to file these charges, after you get the Price, Waterhouse report under date of September 9, President Hoffa sent a letter like this to 107, to Raymond Cohen, who was secretary-treasurer: "Enclosed is a copy of the Price, Waterhouse report on the audit of the books of Local 107 and a copy of a letter from the Board of Monitors dated September 2, 1958" and in that letter, I said to him: "Now, look, you get these charges out and have this hearing set by the middle of September, September 15." Then he goes on to say this: "This is to advise that on Thursday, September 11, 1958, a panel has proposed by the Board of Monitors will be in Philadelphia to conduct a preliminary investigation; based upon a report of this panel, charges will be filed against you and the officers of your local for the purpose of placing Local 107 in trusteeship." Now, notice what he said. He is sending this panel up there "to conduct a preliminary investigation."

We had all the evidence before the Senate Committee upon which you could base charges. We had the Price, Waterhouse report upon which you could base the charges. We had the Price, Waterhouse report upon which you could base the charges. You didn't need to send a panel. The panel was appointed to hear charges. You didn't need to send a panel to conduct an investigation and that's what this panel was sent up there for. The Composition of the panel is as follows: Harold J. Gibbons, and Harold Klien, of Local 773 and at the request of the Board of Monitors, the outside public member,

F. Joseph Donohue. Well, they went up there on September 11, and on the day before this letter was sent out on September 9, I think, they went there, the hearing was to be September 11. At any rate, on September 10, a suit was filed by Local 107 and Cohen against the International to restrain them from having a panel act both as an investigating body to file charges and as well as to hear the case. In other words, they were confusing the two; it looks like to me when charges were to be filed by the International and this panel appointed to hear the charges, as we gave it in your order, they were to act as a panel to hear charges; they were to be quasi-judicial; they weren't going up to make any investigation on the basis of complaints and that they were sent up to investigate and also to hear charges. Naturally, I would enjoin them on that basis, but that wasn't what was to be done. They were to be a panel appointed to hear charges that would be prepared by Mr. Williams and some attorney based upon the evidence before the Senate Select Committee and I hit it pretty close on the date and the way this letter is worded and the injunction being secured in the State Court up there, and there was abundant evidence in the Price, Waterhouse report and in the Senate Select Committee to have these charges filed and this hearing to place this local into trusteeship, and I might say that after this suit was filed, in questioning the powers of the Board of Monitors, hard on the heels there was another suit filed down in Tennessee by Bolling and Smith, and if you compare the two complaints in the two courts, they bear a very striking parallelism in wording as to the powers of the Board of Monitors, but that deals with the first order.

. . . .

MR. O'DONOGHUE: Now, look, we can straighten that out now. I will get you the books and records from the Senate Select Committee and I will put them in your possession and will you file the charges? Will you file the charges if I get you the books and records?

MR. WILLIAMS: Yes.

MR. O'DONOGHUE: All right. Fine, that's done.

MR. WILLIAMS: I will prepare them.

MR. O'DONOGHUE: All right. Fine.

. . . .

Now, I am going to read this into the record.

. . . .

Now, that went out under date of June 27, and they did call off the election and they set aside the nominations. We also immediately took steps to get Price, Waterhouse to go into and audit these books and records. Now, we wanted Price, Waterhouse, as you will notice, as I read this, we wanted Price, Waterhouse to go in to make an audit and we are going to at least, it was my belief as a Monitor, that in all of these trusteed locals, unless there was some certified order, I would order Price, Waterhouse to go into each trusteed local to sudit for at least a year ahead of time because then we would have an audit up-to-date and then immediately we would use them to set up the eligible to vote, also eligible to be nominated.

Now, from that time that order went out to try to get Price, Waterhouse in there, I want you to listen to this story and the following story with McNamara in in New York; we tried to get him in. The Board of Monitors during the period July 3 to July 24, had numerous telephone calls and conferences with the offices of Edward Bennett Williams relative to sending Price, Waterhouse into Local 245 to conduct an audit, as well as to recommend eligible lists so that nominations and elections can be held in this local union.

Now, Mr. Gibbons was the trustee; he is up in the International office. He appointed Wainwright and Brown. Wainwright, by the way has two convictions of armed robbery as late as 1950. He is in there with this fellow Brown. He was appointed by Mr. Gibbons and I want you to keep that in mind as I read this factual background: "About July 24, Mr. Bergan of general counsel Williams' office informed the Board of Monitors that President Hoffa, one of the Monitors to direct Price, Waterhouse to conduct an audit" and now understand this, there is a specific provision in the 1957 constitution that gives Mr. Hoffa or Mr. English power to send an auditor in any local union. Mr. English testified to that before the Senate Committee and in fact, being a trusteed local, I am not arguing, being a trusteed local, that was under the direct supervision of Mr. Hoffa and he could send an auditor in at any time because that was his local. He had it under his supervision.

Now, you will notice the trouble we had to get Price, Waterhouse in. Under date of July 29, the Chairman, by letter, directed Price, Waterhouse to make an audit of the books and records of Local 245 and compile an eligibility list after Mr. Bergan said that Mr. Hoffa wanted the auditors to do it and he himself wouldn't do it and we already on the same date by copy of this letter directed to Price, Waterhouse was sent to President Hoffa for an audit date of August 5. President Hoffa, by letter, advised secretary-treasurer Brown of Local 245, that the Monitors had proposed the audit to assist them in making recommendations to the International and he recommended that every courtesy be shown to Price, Waterhouse representatives, and that all available information be given to Price, Waterhouse. Well, Price, Waterhouse undertook the task of making an audit of Local 245 and Mr. Hertz of the Washington office went to St. Louis and he made arrangements for their St. Louis office to send a man into Local 245 to make the audit under date of August 27. H. J. Brown, Local 245, sent a wire to the Board of Monitors stating that before he could permit the audit of the books, of this loca, he would like to be informed of the purpose and procedure of this audit. This is a trusteed local with Brown sending this telegram. It was the same thing as if Hoffa had sent it. The Board of Monitors called Brown and told him that the audit was the first step to be conducted in releasing the local from trusteeship in accordance with sound principles of fiscal responsibility, so that we could have an audit of date; that from here on, this is the audit of date, the trusteed local is out and new local comes back into life, as of that date. Brown agreed that the audit should be conducted and it was to begin on September 2. Accordingly, the St. Louis office of Price, Waterhouse dispatched an auditor from St. Louis to Springfield, Missouri, to conduct the audit. He had a good name, Sullivan. On September 6, H. D. Sullivan, a representative of Price, Waterhouse went into the office of Local 245 and advised that he was from Price, Waterhouse and desired to make an audit. Now, imagine, everything is agreed, the man goes from St. Louis to Springfield; he was told he could not touch the books or make an audit and Mr. Sullivan immediately left Springfield, Mo. and returned to the St. Louis office of Price, Waterhouse. Further, at the time that Mr. Sullivan appeared at the office of Local 245, the president of the local, Wainwright and Secretary-treasurer Brown told Mr. Sullivan that they had a discussion and concluded that Local 245 does not need an audit and they so advised Mr. Hoffa.

We didn't hear anything further from Mr. Hoffa. On September 2, the Board of Monitors received a wire from H. J. Brown, acting secretary-treasurer of Local 245, stating: "We have refused to have the books audited until a representative of this union has a personal interview with the Monitors." Price, Waterhouse sent a letter to the monitors dated September 2, a copy of which is before the Court and attached to the petition stating that no further efforts would be made to make an audit until such time as Price, Waterhouse hears from the Chairman of the Board of Monitors or from the International.

. . . .

Now, at the threshold before I go much further with this, I might say that a committee, I believe, of five men appeared before the Board of Monitors. They were members of Local 808 of New York. They brought with them certain financial records and there was a discrepancy with respect to the cash balance that was in 808, that had been filed with the Secretary- of Labor under the provisions of Section 9 f, g, and h of the Taft-Hartley Act and certain statements or so-called accounts made by a man by the name of Curry, if I recall; and there was a wide divergence as far as that was concerned. There was also a letter addressed to General President Hoffa, asking for an auditing of the books and records of that particular local, which as I recall, remained unanswered. Besides having this question that they had also stated to the Board of Monitors, that they had also asked that McNamara be removed from office.

There is a section in the International constitution which provides that if anyone is convicted of a crime or serious wrongdoing, he can be expelled. The Appellate Division of the State of New York with regard to Sickles and Mauriello, in construing that section, said they could be expelled upon mere conviction. We didn't ask that; we just asked that having been convicted of extortion, a serious crime, that he take a leave of absence because it may be, and if it is, well, he may be reversed and for his good, I hope it is, all that we wanted to establish that a policy, at least, during the chairmanship that he not remain, in violation, if he is convicted of a crime and pending appeal, that he take a leave of absence and then we asked for this order and then we asked for the audit of the books of 295.

Now, between--in July, during the two-week period, there were numerous telephone calls and conferences with the office of general counsel Williams, whether

Hoffa was going to issue this order directly or whether we were going to issue this order directly or whether we were going to do it. There was abundant constitutional power in Mr. Hoffa to do it and in general secretary English to do it. The sections are in the constitution, but they said they wanted us to do it and on July 24, Mr. Williams orally informed the Chairman that the International Union had authorized audits of the books of Local 295 and 808, and on July 27, Mr. Bergan, informed the Board of Monitors that President Hoffa wanted the Monitors to issue the order to direct Price, Waterhouse to conduct the audit on July 29. The Chairman of the Board of Monitors directed a letter of authorization to Price, Waterhouse to conduct the audit of the books of Local 808 and 295.

I might advise, interpolate, that 295 was a trusteed local directly under the control of the International. That under date of August 5, 1958, general president Hoffa sent a letter to John S. Mahoney, secretary-treasurer of Local 808 advising him that President McNamara, advising him that the local unions would be audited by Price, Waterhouse and that local union was to show every courtesy and they also sent a like letter on that date of Local 295.

Now, on August 11, the Monitors received a letter from Theodore Hertz, resident manager of Price, Waterhouse that the New York office had got in touch with Local 295 to make the audit and Bergan advised the representative that 295 had not received any letter from Mr. Hoffa and he would not take the responsibility for arranging the audit without the approval of the local executive board, which would hold a meeting in about two weeks; also, Price, Waterhouse received advice from Local 808 that Mr. Fitzpatrick, they had gotten a letter from Mr. Hoffa, but Mahoney was no longer an officer and if Price, Waterhouse wanted to audit the books of Local 898, they would have to take it up with Mr. McNamara.

Well, to make a long story short, Price, Waterhouse called 898, called 295. They couldn't order any audit; they wouldn't let them. 295 said the books are down at the District Attorney's office; 808 said, "you go back to Mr. Hoffa and let him audit the books." So we didn't get any books audited and Price, Waterhouse came off it, they just couldn't keep two men waiting days and days on end trying to get in. There was no audit made.

Now, there was also this question of getting McNamara to get a leave of absence. Mr. Hoffa did send us a wire and he said that he had talked to McNamara the night before and he had ordered McNamara to take leave of absence and McNamara said he would take a leave of absence beginning September 15 and then there was a membership meeting of Local 808 and they voted that McNamara didn't have to resign. So McNamara is still there and there are no audits made of the books and records, though we had letter writing and phone calls but nothing was done.

Now, let's get to this order of recommendation of number 14. I am awfully happy we are going to reach this before we adjourn. It's very shor one. (See Monitors' Exhibit #14). This is an order Mr. Williams has characterized this order very improperly. We haven't ordered this international to set up any particular system.

. . . .

We have never issued any order that any particular type of bookkeeping records or anything be set up by the International.

First, let's dispell that right now. All that we did was send the order, rather, send the report of Price, Waterhouse to Mr. English and asked Mr. English to study it and go over it and place it at the earliest possible at the next board meeting on the agenda. This was sent out July 25, we asked that you set it at the next meeting and let us bring Price, Waterhouse, the people that made it so they could discuss it with you and the general executive board because that section of the order says the Board of Monitors shall counsel with the general executive board and shall establish auditing procedures.

We haven't come up with any particular system. We don't know what particular system Price, Waterhouse will recommend. They had a meeting of the general executive board on September 3. This was not placed on the agenda. They called us before another meeting September 16; this wasn't placed on the agenda. After they discussed the convention which we came up there for, they took the Board of Monitors into the back room and they had the National Cash Register Company man there tell us about the National Cash Register machines, which are in their local unions and which are excellent. Price,. Waterhouse, will undoubtedly study the situation and gear their particular report or their record keeping as they make the study and the report. After that meeting, I said I would be happy to have Mr. Hertz confer with the representatives of the National Cash

Company and I believe he did that on the afternoon of September 12th is that correct--yes, and he conferred with the National Cash man. They are now in the process of meeting. We expect to have meetings but this, your Honor, this matter should have been put down on the agenda of the first meeting of that Board after Mr. English received this order and permitted me to bring Price, Waterhouse representatives with them and discuss it with the general executive board in attempting to reach an objective appraisal of what their report is and I submit that wasn't done and it hasn't been done. That's what our order asks for. We haven't made any specific type of an order or recommendation. I will tell you what Price, Waterhouse did so; that Article 23 of the Constitution says this, Section 10; and this is what Price, Waterhouse called to the attention of the general secretary-treasurer: "Local union secretary-treasurers shall report to the general secretary-treasurer by ten day of each month of the number of men that are being carried on the books of the local union as goodstanding members, as of the first day of that month and all new members who have been initiated during the previous month and all members who have paid up their back dues and again become in good standing. This report must be made on the monthly report blank that is issued by the general secretary-treasurer."

In recommending that there be some method of record keeping be kept in the International, the name, the address, the social security number and the good standing member, he said that section of your constitution is not being observed; he further said Section 12: "Local union secretary-treasurers must report the names and addresses of all new members coming into the local union to the general office." He said that was not being observed.

Section 13, says: "Local union secretary-treasurers shall send to the general secretary-treasurer, a revised list quarterly of the names and addresses of all members of goodstanding in the local union." He observed in his report that that was not also observed and those lists were not coming in, and he did state that he would like to discuss with them.

TRANSCRIPT OF PROCEEDINGS

NOVEMBER 6, 1958

TESTIMONY OF MARTIN F. O'DONOGHUE

Now, under date of July 7th, I addressed a letter to Mr. Williams, copy of which I wish to introduce into evidence, together with a legal memorandum that I prepared, which codifies the law of due process, that, namely, you must have filing of charges and a notice of hearing in order to place a local union under trusteeship.

In substance the letter dated July 7, 1958, said, "Dear Ed: I enclose herewith an original and a copy of a memorandum which I have prepared regarding the necessity for specification of charges, notice and hearing in re Local Union 107. I think a copy of this memorandum should be given to 'Jiggs Donahue'. I would like to discuss this matter with you regarding the filing of charges and the procedure relative to the hearing on Local 107. Sincerely yours, Martin F. O'Donoghue, Chairman."

. . .

Now, with respect to Local 107, I would like to introduce as Monitors' Exhibit No. 24 a carbon copy of a letter dated September 8, 1958, from Martin F. O'Donoghue, Chairman, to James R. Hoffa, dated September 8, 1958. It reads as follows:

"Dear Mr. Hoffa: Enclosed is a copy of the Price-Waterhouse Report on Local No. 107, Philadelphia, Pennsylvania. In accordance with the provisions of Order of Recommendation No. 4, and my letter of July 9th, 1958, addressed to you, the Board of Monitors recommends that by September 15th, 1958, the International Union file charges against Local 107 in accordance with the provisions of Article VI, Section 5 (a), of the International's Constitution, that by September 15th, 1958, a copy of the charges be furnished to the Monitors and that by October 1, 1958, a hearing be conducted on the charges. It is also recommended that the charges be based upon the complaints filed by the rank and file committee of Local 107, the evidence developed by the Senate Select Committee and the enclosed Price-Waterhouse report. Mr. Theodore Herz of Price-Waterhouse and Co. has expressed his willingness to assist whomever you designate to draw up the charges. Very truly yours, Martin F. O'Donoghue."

. . .

THE WITNESS: No, I would also like to place into evidence a copy of a letter which I received in due course -- I received it. I think it was attached to the suit that was filed in Philadelphia. It is dated September 8th, 1958, addressed to Mr. Raymond Cohen, Secretary-Treasurer of Teamsters Local Union No. 107 and signed by James R. Hoffa. It in substance, and I think it is well if I read it again in the record because it explains the position of the Board of Monitors, "Dear Sir and Brother: Enclosed is a copy of the Price-Waterhouse report on the audits of the books of Local 107, and a copy of the letter from the Board of Monitors dated September the 11th, 1958, a panel, as proposed by the Board of Monitors, will be in Philadelphia to conduct a preliminary investigation. Based upon the report of this panel charges will be filed against you and the officers of your local with the purpose of placing Local 107 in trusteeship. The composition of this panel is as follows: Harold J. Gibbons, International Vice-President; Howard Kline of Local 773, and at the request of the Board of Monitors, the outside public member, F. Joseph Donahue of the District of Columbia. Fraternally yours, James J. R. Hoffa."

. . .

I spoke to Mr. Gibbons one day when he came before the Board of Monitors about getting auditors to go into Local 245 and the necessity for us having it done. In other words, this was the first trusted local that came before the Board of Monitors after I assumed the chairmanship, and because the manner in which those nominations were conducted and the lack of a proper eligibility list of those who could be nominated, or for that matter who could be eligible to vote, plus the fact that we had looked over, in the office of the International, a financial report from Local 245, during the year -- just the year prior. And I think it showed some 90-some thousand dollars that came in in the way of income, and there was, in the way of officers' salaries and expenses, I believe, in excess of $50,000 of that $90,000 income.

At any rate, we felt that as the first step in the procedure under the Board of Monitors in releasing trusteed locals, that we should have an audit of the year, at least the year prior, during trusteeship, so that we would have a cut-off date, so that there would be nominations and elections and then the new autonomous local would take over and you would have a complete cut-off date and you would have then an audit report for that went on during the period of trusteeship, because that was the International's responsibility.

In fact, that was gearing our auditing procedure into the report of Price-Waterhouse. They had recommended to the Board of Monitors that they make a study of the auditing procedures that should be followed with respect to the Internatinnal taking over a trusteed local, somewhat akin, that is, of the day the National would take it over, there would be an immediate audit, there would be a cut-off date and there would be a time and the procedure of reporting back to the International while under trusteeship.

That was the reason that the Board of Monitors wanted to get this trusteeship report -- get an audit made of this trusteed local. That was to be our first step. And we would also use the eligibility rules and the rules for election in 245.

To date there is no Price-Waterhouse, has not been authorized to go into that Local. That is the responsibility of Mr. Hoffa and Mr. Gibbons. They could, this minute, give an order to 245 to let Price-Waterhouse go in there and make that audit.

. . .

Getting now to Exhibit No. 16, this order that deals with Mr. Brennan. (See Mon. Ex #1)

. . .

Now, that was issued on August 15th. And on August the 18th, I sent a letter to Mr. English and I request that it be marked as Monitors' Exhibit No. 33.

. . .

The letter, in substance, reads as follows: "Mr. John F. English, General Secretary-Treasurer, International Brotherhood of Teamsters, 25 Louisiana Avenue Northwest, Washington 1, D. C.

"Dear Mr. English: With respect to the filing of charges against Vice-President Owen B. Brennan pursuant to Order of Recommendation No. 17 dated August 15th, '58, I recommend that you secure special outside counsel to advise you in the preparation of the charges, in the gathering of evidence and in the presentation of the case before the General Executive Board.

"I make this recommendation to you because Vice-President Brennan and General President Hoffa were business associates in managing Mr. Davidson and accordingly it would not be appropriate for the General Counsel or special counsel of the International to act as legal adviser to you concerning the charges against Vice-President Brennan.

"Very Truly Yours, Martin F. O'Donoghue."

• • •

Under date of August 20th, 1958, I received a letter from John F. English, addressed to Martin F. O'Donoghue, and I offer this as Monitors' Exhibit No. 36.

• • •

THE WITNESS: Dated on the stationery of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, dated August 20th, 1958, addressed to Martin F. O'Donoghue, Chairman, Board of Monitors, "Dear Mr. O'Donoghue:

"I hereby acknowledge receipt of Order of Recommendation No. 16 which requires me to take certain affirmative action against Vice-President Brennan, Owen B. Brennan. The issuance of this Order and the dissent by Mr. Wells has raised certain questions in my mind with regard to my power to act as you have requested. What you in effect request is that I convene the General Executive Board, file charges against Owen Brennan, and request that he take a leave of absence from his position as International Vice-President pending final decision on the charges.

"In order that my position may be perfectly clear both to you and to the general membership, I wish you would be good enough to indicate for me where my power to take such action is found in the International Constitution. If you desire to disqualify General President Hoffa from acting on this case, it would be my opinion that 1st Vice-President John Conley of New Jersey would be the appropriate officer to take the action you have requested. In any event I would like to be perfectly assured of my legal and Constitutional position before I take the action that you have proposed. May I further request that you suspend the August 25th date for compliance with this Order until such time as I can be assured of a constitutional basis for the action that you ask me to take.

"Very Truly Yours, John F. English, General Secretary-Treasurer."

. . .

THE WITNESS: Just to interpolate in this final sequence that as Mr. Wells stated here before the Court yesterday, any member of the International Union of Teamsters can file charges against any other member or officer.

Now, in answer to Mr. English's letter, the Board of Monitors issued supplemental Order to Order of Recommendation No. 16 and it reads from Martin F. O'Donoghue, Chairman, to James R. Hoffa, "Re: Filing of Charges against Owen B. Brennan, 7th Vice-President." (See Mon. Ex #2)

. . .

THE WITNESS: I think it would be well -- the next exhibit with respect to this compliance with Order of Recommendation No. 16 dealing with Owen B. Brennan, is a letter dated August 26th, 1958, from Edward Bennett Williams, addressed to Martin O'Donoghue.

. . .

"Dear Marty, reference is made to your supplemental Order to Order of Recommendation No. 16 relating to Vice-President Owen B. Brennan. Your Order contemplates that the International employ special outside counsel to process charges against Vice-President Brennan. As you must realize this is an extreme departure from anything which the Teamsters' Union has ever done, and, indeed, it is at variance with the practice in most other Internationals. There is nothing in the Teamsters' Constitution which contemplates the employment of counsel for such a purpose. In fact, Under Article XVIII, Section 1(b), the accused is not entitled to be represented by counsel. It would seem to follow from this provision that it would be manifestly unfair for the Union to be allowed to employ an attorney while that same right was denied the member undergoing trial.

"Counsel for prosecution or defense in Union hearing procedure would be a precedent clearly at war with the Constitution.

"Finally, if the employment of an attorney were contemplated by the Constitution, I could not agree that the International was not free to employ counsel of its own choosing, or use regularly retained counsel. In view of the constitutional problem that is presented by your supplemental

Order of Recommendation, the International will defer any action against Brennan until the matter of special outside counsel is resolved.

"Very Truly Yours, Ed."

That is Monitors' Exhibit 38.

I would like now to follow in sequence: The answer by me as Chairman of the Board of Monitors to Edward Bennett Williams, dated September 3rd, and that it be received as Monitors' Exhibit No. 39.

. . .

THE WITNESS: Edward Bennett Williams, Esquire, dated September 3rd, 1958.

"Dear Ed: This will acknowledge receipt of your letter of August 26th, '58, in which you raise a constitutional problem concerning the employment of special outside counsel which was recommended by the Board of Monitors in its supplemental Order to Order of Recommendation No. 16.

"To begin with, it should be noted that Article XVIII, Section 1(b), which has reference to the trial of 'any member or officer of a local union' is not applicable in the instant case inasmuch as the Monitors have recommended that Vice-President Brennan be tried as an International Union office in accordance with the provisions of Article XVIII Section 3(d).

"In any event, Section 1(b) provides that the accused is not entitled to be represented by counsel. It does not provide that counsel may not be retained to advise the accused and the member of the Local Union who might represent the accused. The Board of Monitors did not mean to imply by its supplemental Order that the special counsel should present the case against Vice-President Brennan before the General Executive Board, but, rather, that the counsel should serve as an adviser to the charging party.

"Finally, it would be inappropriate for the International to employ counsel of its own choosing or to use regular retained counsel because as the case develops General President Hoffa, who was a business associate of Vice-President Brennan, in managing Mr. Davidson, may be implicated in the misappropriation of funds. Accordingly, the Board recommends that the International Union comply with the provisions of the Order of Recommendation No. 16 and the supplemental Order thereto.

"Sincerely Yours, Martin F. O'Donoghue."

Now, in the following sequence, and before I make a comment, there is the next letter that I received, after the filing of this suit, dated October 17th, from Mr. Hoffa addressed to me and I request that it be received as Monitors' Exhibit No. 40.

. . .

"Dear Mr. Donoghue: This has reference to your Order of Recommendation No. 16 relating to charges against 7th International Vice-President Owen B. Brennan. More particularly, it refers to your recommendation that I disqualify myself from any participation in this matter, and that the International retain counsel to aid in the preparation and presentation of the case.

"General Secretary John English and 1st International Vice-President John Condon are both unwilling to prefer charges against Vice-President Brennan. Please be advised, however, that I, as General President, will prefer these charges if you approve my participation in this case. I feel that in a matter as serious as this, particularly when it involves a Vice-President of our International Union, the charges are most properly preferred by the General President and I am willing to undertake that responsibility.

"I cannot agree, however, to any participation by an attorney in this case. Our Constitution is clear --"

MR. WILLIAMS: Excuse me, I think you misread the first sentence.

THE WITNESS: "I cannot agree, however, to any active participation by an attorney in this case."

. . .

"Our Constitution has been clear and it has been standard practice in the past not to allow participation by counsel for either side. There is an unbroken line of precedent to support this position, and I do not believe that the International should deviate from this practice in the present case. If you approve my participation and withdraw your recommendation with regard to counsel, I will file charges as soon as possible upon receipt of your letter."

May that be received as Monitors' Exhibit No. 40?

Under date of October 28th, as Chairman of the Board of Monitors, I addressed a reply to Mr. Hoffa and I ask that it be received as Monitors'

Exhibit No. 41.

. . .

THE WITNESS: "James R. Hoffa, Re Order of Recommendation No. 16, "Dear Mr. Hoffa: The Board of Monitors has given careful consideration to your letter of October 17th, '58, in which you inform the Board that the General Secretary-Treasurer and the 1st International Vice-President are unwilling to prefer charges against Vice-President Brennan, but that you will do so if the Board approves and withdraws its recommendation with regard to counsel. It is the decision of the Board that it must adhere to its recommendation that you disqualify yourself from any participation in the case, insomuch as you were a business associate of Vice-President Brennan in managing Mr. Davidson, and, hence, you may be implicated in the alleged misappropriation of funds.

"For the same reason it would be inappropriate for the International Union to use regularly retained counsel or to employ counsel of its own choosing in the instant case. The use of counsel recommended by the Board of Monitors will not only ensure a fair, impartial hearing, but also will give assurance to the membership and the public that a fair, impartial hearing will be conducted. I have already explained in my September the 3rd, '58, letter to General Counsel Williams that the Board has not recommended that the special counsel should actively participate in presenting the case before the General Executive Board, but, rather, that the counsel should serve as an adviser to the charging party.

"Accordingly, the Board of Monitors again recommends that the International Union comply with the provisions of Order of Recommendation No. 16 and the supplemental Order issued therewith."

Now, with respect to that Order 16 we requested that Price-Waterhouse be sent into the Michigan Conference Welfare Fund to go over the books to establish the amount of money that was paid to Mr. Davidson. To date that hasn't been done. We also requested that Mr. English write, or Vice-President Condon write to the Local Union and ask them to take -- to file charges, likewise, against Mr. Brennan. And that hasn't been done.

We believe, the Board of Monitors, that outside counsel should be taken, Your Honor, with respect to this case because the evidence showed before the hearing of the Senate that General President Hoffa and Vice-

President Brennan were partners in managing this boxer; that there should be a thorough investigation made of that, the books and records, the minutes and everything of the Welfare Fund should be examined into and a computation made by an auditor of the amount of money that was due. It may well be and it may not be that General President Hoffa did not know anything about Davidson being paid by the Welfare Fund. At least the testimony of Davidson discloses that, that he stated that he didn't believe that Hoffa knew anything about it.

However, because of the fact that Mr. Hoffa and Brennan were partners, we felt that there should be this thorough examination made into it and that General President Hoffa should disqualify himself and have nothing to do with the filing of the charges. We also -- and one of the reasons why this particular matter is before Your Honor here now, as to the employment of outside counsel: They raise Constitutional objection.

No section of the Constitution has been pointed out to me where it would be unconstitutional to employ outside counsel. Where is the Constitutional provision to employ and establish an anti-racketeering commission?

. . .

THE WITNESS: Going to the next order of recommendation, Order of Recommendation No. 17, Subparagraph 6 of Paragraph (c) of the complaint. (See Mon. Ex. #3)

. . .

With respect to Section No. 4 of the order of August 15th where we asked General President Hoffa to make an investigation into the allegations that were at the Senate hearing with respect to the Dewey Restaurant, that has not been complied with. We have received no report, nor do we know if any such investigation was made.

The next order of recommendation is concerning the publication of Order of Recommendation in the International Teamsters.

. . .

THE WITNESS: No. 7. It is Subparagraph 7 of Paragraph D of the complaint and it is known as Order of Recommendation No. 18, which is attached as Exhibit 15 to the petition.

. . .

I direct your attention with respect to the complaint, it is on page 4 of the complaint, it deals with the Board of Monitors, also reports that the International Executive Board violated the consent order by deciding the Joint Council 13 election appeal without consulting the Monitors. That ties into this question of requesting order of recommendation be put into the Teamster Journal. And I very thoroughly agree wholeheartedly with the statement that Mr. Williams made yesterday in oral argument that the only connection between the International and the membership is the Teamster Journal, and how essential it is that they get the true statement of facts dealing with anything that has happened, either with the Board of Monitors, with this Court, or with any other factual matter.

I have to start my testimony to deal with a meeting before the General Executive Board. I don't have the exact date. It was sometime July 1st or 2nd. At any rate, it was my first meeting with the General Executive Board. I had had a very friendly discussion with General President Hoffa prior to that, upstairs in the lunch room.

I came down and I went before the General Executive Board and during the course of it, I asked them to please give me a list of all appeals that were pending before the General Executive Board, because under Section 1 of the Court Decree, the Board of Monitors had the authority and power to review every appeal that came before the General Executive Board.

Mr. Hoffa gave me a list. I believe it was a list of some 14 cases. We had not gone over them and I must say to that extent the Board of Monitors had been a little bit negligent in not having proper procedure established, in going into the thing like that.

However, he gave me a list, Mr. Hoffa did, and it listed all these appeals. And on this particular list it stated that this appeal of Joint Council 13, the panel had not made a report. And with that, I said -- I accepted it, and I said we will let the Board of Monitors adjourn for an hour and they will go outside and go over these appeals and then we will come back.

We did come back and we then made recommendations to leave three of them out and the others we approved, and we left.

It was the next morning, I heard from one of the attorneys representing the International that the Board of Monitors had decided this

Joint Council appeal. That morning I had a conference with Mr. English and with Mr. Hoffa, and with Mr. Williams, and I told -- after the conference was over, it was friendly up to that point -- I told Mr. Hoffa that I had wanted the file on Joint Council 13 appeal to be sent to the Board of Monitors immediately, that we had the right under this order to pass on that appeal and they were not to pass on it until we first made recommendations.

Mr. Hoffa went into a violent -- well, he became very violent. He said, "You are not going to get it, you have no right to get it; if I understood the Court decree that way, I would never have signed it. You are trying to run it."

Mr. Williams did an excellent job in trying to tell him to calm down and that it was, under the order we had it, and that we should have it.

I went back to the office and I took it up with the Board of Monitors that afternoon and that was one time Mr. Wells was thoroughly in agreement with us. He said we had a right to it and that we should send an order up for him to send that file to us. He sent the file to us and we got it.

I subsequently learned that in between the time that we were in that room going over these files, a question was asked of Mr. Hoffa as to whether or not there was going to be any decision that day on Joint Council 13. He said if you fellows stay around here there will be a decision that day. I understand that even -- well, I won't go into that. That is practically hearsay. But this is what gets to this publication of this Teamster Journal: After this argument over this particular question, there appeared in the Teamster Journal of August, 1958 -- now this is a month after, while this matter is still before us -- this quotation on page 7, "The Board upheld the report of a special three-man panel which investigated a disputed election at Joint Council 13, St. Louis. The votes cast by Local 447 Carnival and Allied Workers, had been disputed. The Panel found that Local 447 was a duly affiliated member of Joint Council 13 and that its votes were valid. The Board ruled that the following officers were elected: Harold J. Gibbons, President; Edward D. Dorsey, Vice-President; Patrick J. Burke, Secretary-Treasurer; Robert Lewis, Recording

Secretary; Peter Kunkel and Leslie Dickens, Trustee. A tie for the third trustee position between Dale Ferris and William Frenger will be settled in a run-off election."

That, of course, that decision possibly had been rendered but that should never have been printed because we were to review the files and make recommendations, and that was an inaccurate statement to its membership.

I immediately, when it was called to my attention, I immediately addressed a letter to Mr. Hoffa. I think the letter speaks for itself and I ask -- I ask that this be received in evidence as Monitors' Exhibit 44, that portion of the Teamsters Journel, August, 1958.

. . .

THE WITNESS: On August 6, 1958, I addressed a letter to General President James R. Hoffa, and I ask that it be received as Monitors' Exhibit No. 45.

. . .

"Dear Mr. Hoffa: Late this afternoon I received a telephone call from the Editor of the AFL-CIO News pointing out to me that, on page 7 of the Journal of the Teamsters for the month of August, a story was printed in words as follows: 'The Board upheld the report of a special three-man panel which investigated a disputed election in Joint Council 13, St. Louis. The votes cast by Local 447, Carnival and Allied Workers, had been disputed. The Panel found that Local 447 was a duly affiliated member of Joint Council 13 and that its votes were valid. The Board ruled that the following officers were elected: Harold J. Gibbons, President', etc.

"You know full well that you were advised by me personally, as Chairman of the Board of Monitors, that the action of the General Executive Board on the preceding night of July 2 in approving the panel report after the Board of Monitors had left the room was, in law and in fact, null and void. Your General Counsel agreed with the position that I took, as Chairman of the Board of Monitors, that, before the General Executive Board could vote on any matter up on appeal, the Board of Monitors was to first consider the entire record and make recommendations. You were violently opposed to this position, but, however, later you sent the file to this office.

"You were further instructed by the Board of Monitors that the

International Brotherhood of Teamsters was not to publish or give notice of any kind of its action with respect to the appeal as to the validity of the election of Joint Council 13 until the Board of Monitors had an opportunity to make recommendations concerning the appeal. This was forwarded to you under date of July 3, 1958, and delivered to your office by messenger.

"I am, therefore, demanding that you immediately forward a copy of this letter to all of your local unions throughout the entire jurisdiction of the Teamsters and that you authorize that this letter be read at all local union meetings. Also, I am requesting that you publish this letter, together with a letter of retraction, in your next monthly journal.

"I only regret that I did not know that the International had flagrantly violated the rules of fair play and also violated the order of the court by publishing this article in your journal. I am filing a supplemental report with Judge Letts the first week of September and I am calling this to his attention.

"It seems to me that you know full well what went on with respect to the General Executive Board hearing this case, more particularly that I, as Chairman, had asked you for all appeals that were coming before the General Executive Board that evening. After the Board of Monitors had left the General Executive Board around 7 in the evening, this case was brought up and approved without first being submitted to the Board of Monitors.

"You know full well that this should never have been published in view of the matters that ensued between the time that you approved it and we were given possession of the file, and, more particularly, when you were instructed by the Board of Monitors not to publish any notice of the action taken. Very truly yours, Martin F. O'Donoghue, Chairman."

• • •

THE WITNESS: "Dear Marty: This has reference to your letter of August 6, '58, to President Hoffa in which you refer to an article in the August issue of the International Teamster, reporting that the General Executive Board had upheld the disputed election in Joint Council 13. I have had the publication of this article thoroughly investigated and am now satisfied that it occurred when Jake McCarthy, the Teamster public relations man merely read the minutes of the Executive Board meeting and transcribed them in the form of this article. Quite naturally subsequent agreement by President Hoffa to withhold action of Joint Council 13 did not reflect itself in the minutes; although admittedly the publication of this story was in error, it was the result of an honest mistake and not from any devious or underhanded motive. For these reasons I have recommended to the General President that a retraction be printed in the September issue of the Teamster. I cannot, however, and I will not recommend that the President take the action requested in your letter of August 6th. I do not believe that the International should be required to thus demean itself before its general membership because of what was, in truth and in fact, nothing more than an honest oversight by their public relations department. Very truly yours, Edward Bennett Williams."

May I have the retraction? I will leave it to the Court.

In the September issue of the Teamster Journal which I would like to introduce as Monitors' Exhibit No. 47.

. . .

THE WITNESS: This is an article that is printed on page 16 in the lefthand corner as follows:

"J.C. 13. Article: The Board of Monitors has demanded that the Teamster reprint a retraction of its story in last month's issue on the election of Harold J. Gibbons as President of Joint Council 13. The teamster reported that the General Executive Board had upheld the results of the election in rejecting an appeal for the losing candidates. The Monitors protested that they had not been notified in advance that this action would be taken and immediately announced that they were undertaking an investigation of the election to determine if the appeal was based on valid ground. The Monitors protested the inclusion of the news report in our last issue."

That is the alleged, I will call it, retraction.

. . .

Let me say this: As a result of this publication plus another publication that appeared in one of the Teamster Journals relative to 107, the article ran something like that, Mr. Cohen and the members of the Local Board 107 requested that there be a hearing on this trusteeship. That was printed in one of their journals, too. At any rate after this matter came up in the August issue, the Board of Monitors made it Recommendation No. 18 and it was dated August 18, 1958, Order of Recommendation No. 18. (See Mon. Ex. #15)

. . .

"On August 21, 1958, the Board of Monitors received a letter which I will request be received in evidence as Monitors' Exhibit No. 48 from James R. Hoffa to Martin F. O'Donoghue, Chairman.

THE CLERK: It should be 49.

THE WITNESS: 49?

THE CLERK: Yes.

. . .

THE WITNESS (Reading): "I acknowledge receipt of your Order of Recommendation No. 18 dealing with the publication of Order of Recommendation in the International Teamster and requesting that a 500- to 1,000-word space segment be set aside for a report on monitoring activities.

"The International comply with the request, to any reasonable degree. However, I do not feel that I can commit the International in advance to the dissemination to our general membership of material which might tend to give them a false impression. An instance of the type of material to which I refer is contained in your Order of Recommendation No. 1, dated June 2, 1958."

. . .

(Reading) "A reading of this order would give the impression that the International had refused to cooperate with the Board of Monitors over a period of months in supplying them the requested information. Because of the possibility that an item of this nature may recur, I cannot make a firm advance commitment. Be assured, however, that we will always be ready to discuss with you or your representative the insertion in the International Teamster of material which you request.

"I must also advise that International retain its prerogative to state its position with respect to any of the Monitors' Orders of Recommendation. In this regard, we will not hesitate to point out what we consider to be errors and misstatements of fact contained in the recommendations.

"Very truly yours, James R. Hoffa, General President."

Under date of August 27th, as chairman, I answered Mr. Hoffa's letter, and I ask that my carbon copy be received as original, as Monitors' Exhibit No. 50.

. . .

"Dear Mr. Hoffa: In accordance with the provisions of the Order of Recommendation No. 18, the Board of Monitors requests and recommends that the International Union publish in the September issue of the International Teamster the following material:

"Orders of Recommendation No. 15 through No. 20, including the Supplemental Orders to No. 16 and No. 19, the various memoranda of Member Wells concerning the issuance of these orders and the rules governing the conduct of local union nomination meetings and election of officers which form a part of Order of Recommendation No. 20.

"It is requested and recommended that this material be introduced by the following prefatory statement: At its meeting of August 11-14, 1958, the Board of Monitors decided to issue the following Orders of Recommendation:

"Very truly yours, Martin F. O'Donoghue, Chairman."

- - -

THE WITNESS: Under date of August 27th, 1958, on this same matter, I received a letter from Mr. Hoffa, addressed to me as Chairman, which I will request be introduced and received into evidence as Monitors' Exhibit No. 51.

. . .

THE COURT: It may be read.

THE WITNESS (Reading): "Dear Mr. O'Donoghue: Reference is made to your Order of Recommendation 18, dealing with the publication of Orders of Recommendation and a Monitors' Report in the International Teamster, and my reply concerning your proposal, subject to certain conditions not here material. Your Order of Recommendation was dated August 18th, '58, and delivered to the International on that day.

"Publication date for the International Teamster varies monthly between the 15th and the 28th, dependent upon many factors. This month, publication is scheduled toward the end of that period. Notwithstanding this month's slight delay, it would have been impossible to block out sufficient space in the Teamster to comply properly with your recommendation.

"For that reason, the International is not able to publish your Order of Recommendation in the September issue. I would suggest, in accordance with my letter, that you designate a representative to meet with our International representative within the next two weeks to discuss matters that you may wish printed in the October issue.

"Very truly yours."

- - -

THE WITNESS: Now, in reply to that letter, I immediately replied under date of August 28th, and I ask that it be received as Monitors' Exhibit No. 52.

- - -

(Reading) "Dear Mr. Hoffa:

"The Board of Monitors desires to make it clear that it is insisting upon compliance with Order of Recommendation No. 18, dated August 18, 1958, concerning publication of Orders of Recommendation in the International Teamster.

"Accordingly, the Board again recommends that the following material be published in the September issue: Orders of Recommendation No. 15 through No. 20, including the Supplemental Orders to No. 16 and No. 19, the various memoranda of Member Wells concerning the issuance of these orders and the rules governing the conduct of local union nomination meetings and elections of officers which form a part of Order of Recommendation No. 20.

"It is also recommended that the September issue not be printed, assembled and/or mailed to the membership until this material has been included in it.

"It should be noted that Mr. Bergan of the General Counsel's Office was informed of the subject matter of Order of Recommendation No. 18 at the Board's meeting of August 14, 1958, and that the recommendation was issued on August 18, 1958.

"It should also be noted that prior to August 20, 1958, Mr. McCarthy and Mr. Bergan informed the Executive Assistant of the Board that although the usual deadline date for submission of material for each monthly issue is the 20th day of the preceding month, the deadline date for the September issue would be seven to ten days after August 20.

"In the event that this recommendation is not complied with, it is the intention of Chairman O'Donoghue to consult with Judge Letts concerning the matter.

"Very truly yours, Martin F. O'Donoghue, Chairman."

. . .

THE WITNESS: Again on September 2nd, 1958, I addressed a letter to Mr. Hoffa, and I ask that it be received as Monitors' Exhibit No. 53.

- - -

THE WITNESS: It reads as follows: "Dear Mr. Hoffa: In reply to your letter of August 27th, '58, with respect to the publication of the Board's Orders of Recommendation in the International Teamster, the Board of Monitors recommends that you fully comply with the Order of Recommendation No. 18 concerning this matter.

"Please refer to my letters of August 27th and 28th, 1958. Without waiving its right to insist on full compliance with Order of Recommendation No. 18, the Board of Monitors, in accordance with your request, has designated its Executive Assistant, Mr. Florian Bartosic, to meet with an International representative to discuss the publication of the Board's Orders of Recommendation in the International Brotherhood -- in the International Teamster.

"Mr. Bartosic will immediately contact your office concerning this matter."

. . .

After that Order on September 3rd, Mr. Hoffa appointed Mr. Bergan and Mr. McCarthy to meet with Mr. Bartosic. And they did meet. Our memorandum date shows it was on September 11th. And in order to get the facts in, Mr. Bergan and Mr. McCarthy said that they would agree to publish the substance of the Orders of Recommendation in the magazine.

Mr. Bartosic came back and told me that and I said -- I disagreed. I said we don't want the substance, we want the exact Orders of Recommendation published, that they should be published to the membership.

Thereafter, I received one other letter on this, two subsequent letters from the International, one dated September the second, from Mr. Hoffa, addressed to me, and I ask that it be received as Monitors' Exhibit

No. 54.

- - -

THE WITNESS: And it reads as follows: "Dear Mr. O'Donoghue: This is in reply to your letter of August 28th, 1958, in which you recommend that the September issue of the International Brotherhood of Teamster not be printed, assembled or mailed until certain material designated by you has been included.

"Your letter was apparently in response to my letter of August 27th in which I advised that the publication deadline would render compliance with the Order of Recommendation No. 18 impossible in September.

"As you are aware the International Teamster is the sole link between the International and its general membership, and, as such, experience has demonstrated the advisability of keeping the mailing date as uniform as possible each month.

"Full compliance with your request would have necessitated the printing of at least an additional 3300 to 3500 words. In terms of pages in the magazine, this would require a minimum of 3-1/2 more pages. To accomplish either an addition or substitution of 3-1/2 pages at that late stage would have been prohibitively expensive and would have materially delayed the publication of the magazine. Our magazine normally runs to 32 pages. This month, however, additional material will enlarge the issue to 40 pages.

"Pages are generally added only in multiples of eight, since the presses at Ransdell normally print the Teamster by double sheet. The addition of four pages is possible but it requires a more costly printing arrangement.

"You can readily see how important this cost factor becomes when you realize that 1,300,000 magazines are usually printed. The substitution of material already approved for publication raises additional problems.

"Our Public Relations Staff attempts to balance the contents of the journal so that each member will find in it items of interest. This process takes a considerable amount of the time of the magazine's staff. It is simply not possible to delete 10 to 15 percent of the approved proof, the amount equivalent to 3300 to 3500 words, and maintain a proper balance. Some deleted items would have to be inserted elsewhere, thus creating almost an insoluble problem.

"The Teamster was printed on Friday, Saturday, August 29th and 30th. The delay of almost ten days before the publication and the incidence of the Labor Day week end has already caused some delay in membership receipt of the magazine. I cannot sanction a further delay.

"Please be advised that the International does not intend to evade its proper responsibilities under the Consent Order, nor does it intend to avoid compliance with the Monitors' Orders of Recommendation issued thereunder, but immediate compliance with Order of Recommendation 18 is not possible.

"As I stated before, we are ready to discuss the insertion of any material you desire in the October issue."

- - -

THE WITNESS: Now, may it please the Court, going to the next order of recommendation, No. 19, it deals with the filing of charges against Glenn W. Smith and H. L. Boling, Secretary-Treasurer of Local No. 515. (Mon. Ex. #4).

- - -

THE WITNESS: From James R. Hoffa, to Martin F. O'Donoghue, on the stationery of the International Brotherhood of Teamsters.

"Dear Mr. O'Donoghue:

"Receipt is acknowledged of order of recommendation No. 19 and the supplement thereto, relating to Glenn W. Smith and H. L. Boling, officers of Local No. 515 in Chattanooga.

"On August 5th I was advised that charges within the local were preferred against Smith and Boling, alleging violations of Article XVIII, Sections 6(h) and 6(10). I was also advised that the trial of these individuals would be held on Monday, August 25th. Upon receipt of this telegram I instructed the local union to proceed in accordance with the International Constitution. These actions were all taken prior to the receipt of order of recommendation No. 19.

"On Monday, August 25, I assumed original jurisdiction under the provisions of Article XVIII, Section 10. I am suspending Smith and Boling forthwith in accordance with your recommendation. Charges will be preferred within the next several days. You will be promptly advised of these charges as soon as they are filed."

Then, in accordance with the other letter that has been in evidence here -- they were suspended according to the order of recommendation and the charges have been filed, and I believe a hearing was set some time around August 28.

Now, may I just point out here with respect to this Order 19, first. We requested in paragraph 3 that the General President make a thorough investigation into the Southern Conference of Teamsters about the $13,500 that they loaned to Local 515, and part of this $13,500 went into the total sum of $20,000 that was allegedly paid to fix this criminal case. So far I have received no report from the General President as to a general investigation made into that.

Secondly, we also instructed General President Hoffa to send Price-Waterhouse into Local 515 to go over the books and records during the period of time that this $20,000 was paid. So far there has been no compliance with that. Smith and Boling, it is true, have been suspended, and charges have been filed. But there should also be an immediate investigation into the Southern Conference of Teamsters to see if those individuals knew or had knowledge of why this money was loaned and what it was being paid for, and the thorough investigation made into that as well as into the books and records of 515 during this particular period of time.

We have had no report of compliance on those, and we are awaiting those, and that is one of the reasons why this matter is here.

- - -

I would also like to introduce into evidence here a copy of a complaint that was filed in the Chancery Court of Hamilton County, Tennessee, by Smith and Boling, against the International Brotherhood of Teamsters. It is Petition for Temporary Restraining Order and an Injunction, together with a copy of a rule to show cause, which is attached. And I request that it be made as Monitors' Exhibit No. 58.

- - -

THE WITNESS: Every order of recommendation recently that we have issued, either court suits have been filed or the officers of the local union to whom it is issued come into my office and threaten me with lawsuits of all kinds, of what they are going to do to the Board of Monitors.

THE COURT: Wait just a minute.

THE CLERK: This is 62 here, Your Honor.

THE WITNESS: All right. This will be 63.

THE COURT: 63.

THE WITNESS: Board of Monitors' Exhibit No. 63.

THE COURT: Monitors' Exhibit 63 will be received.

- - -

THE WITNESS: It is dated October 24, a letter addressed to Mr. Hoffa, from Martin F. O'Donoghue, Chairman of the Board of Monitors, and it also has a copy of the rules governing local union nomination meeting and elections, and the letter speaks for itself.

- - -

"Dear Mr. Hoffa:

"The proposed election rules have been redrafted to incorporate certain suggestions of the Honest Ballot Association. A copy of this new draft is enclosed. I look forward to discussing with you these election rules and the release of trusted locals next Friday, October 31st."

- - -

Now, I wish to just state this, and I think it is evident: At this meeting of the Executive Board, October 16, Mr. Hoffa took the position, evidently concurred in by his General Executive Board, unfortunately there hasn't been a meeting prior to that with these election rules. He took the position --

MR. WILLIAMS: Excuse me. You mean September 16th?

THE WITNESS: September 16th, thank you. September 16th, that there couldn't be any promulgation of temporary election rules for trusted locals, or even for local unions, until there had been an entire draft of model by-laws. Later on in the hearing -- and I think the record -- the Board of Monitors Exhibit 61 -- will show that he did not feel that even if the General President promulgated by-laws that the locals would have to adopt them.

There are two things I want to call to the Court's attention, and I am asking instructions with respect to these temporary rules:

1. That since trusted locals under the Court order are to be released in conjunction with the Board of Monitors and the General Executive

Board, that there be authority in the General Executive Board to promulgate temporary rules of nomination and elections for these trusted locals, and that these rules, after conference with the Committee appointed by the International Brotherhood of Teamsters, if any they think are unreasonable or unconstitutional, that they then be referred back to the Court for the Court's opinion. But the Board of Monitors feels -- and I will go into the trustee matter, locals, right after lunch -- the Board of Monitors feels that it is necessary that these rules of nomination and election for trusted locals be promulgated and effectuated before there are any release of trusted locals out of trusteeship. And there also with every trusted local be an audit of the finances of that local, if there hasn't been a certified audit by any particular order prior to the release, so that we will have an accurate report of what the financing has been, what auditing has gone into those trusted locals while they were under International supervision.

Now, also I want to make a correction in my testimony with respect to the statement I made in that conference with Mr. Bergan and Mr. McCarthy and Mr. Bartosic. Mr. Bartosic tells me that it was Mr. McCarthy and Mr. Bergan merely said that they would suggest and would make a recommendation that the digest of the orders be printed in the journal; and not that they had actually recommended it. And I was in error on that.

I would like to refer to this October issue of the journal, your Honor. They didn't print any of these orders but, rather, made special effort to attack me, write an article involving my chairmanship and Mr. Schmidt's, and that.

* * * * *

Mr. Tierney took the matter up with the Department of Justice and he tells me that the Department of Justice will release all the records of 107 which the committee now has in my custody. And I would be authorized to turn them over to you, Mr. Williams, and it would be in your custody for 107 to use them during this hearing, whatever phase they want, and upon the conclusion of the hearing they are to be returned, and that is perfectly agreeable, and the Department of Justice will notify Mr. Harold Woods, the United States District Attorney in Philadelphia and you and I can work with him to get these records released is that is holding up the injunction in Philadelphia.

Going to exhibit order of recommendation No. 21, which deals with the illegal merger of Local Union 183, Fairbanks, Alaska, with Local Union 959, Anchorage. This was issued on September 5th, 1958, and provides as follows: (See Mon. Ex. 20)

* * * * *

May it please the Court, there is a matter that arose in this second amended petition which has caused a great deal of, well, confusion. And that is the applicability of the old section of the constitution dealing with good standing, under the 1952 constitution, namely, where a man was under check-off and the employer didn't pay his check-off dues by the first of the month, the International takes the position, and at present Mr. Hoffa does, that they are in bad standing, even though there is a check-off and the employer is supposed to get the dues on it before the first of the month.

Now, they have a provision in the constitution which provides that you must be in good standing for a period of at least two years prior to the date of nomination. That takes us back, since the constitution only became effective January 31st, '57, the prior two years will take us back under the old constitution.

MR. WILLIAMS: '58.

THE WITNESS: '58. Very good. "Fifty-eight, it will take us back through the old constitution of 1952. Now, when this amended petition -- we have requested the Court to interpret this particular section and more particularly we raise the question with respect to two orders that we have attached to the petition; namely, it is Order of Recommendation No. 23, Eligibility of Nominees for Office in Local Union No. 377. And I want to read this. (Mon. Ex #24)

* * * * *

THE WITNESS: Very good. I would like to read this into the record and state that Exhibit No. 27, which is attached to the second amended petition, on page 4 of the March issue of the Teamster, and I checked and found out that this was mailed out between the dates of March 5th and March 7th, 1958, to the membership by checking with Ransdell. This reads as follows:

"Members Take Notice.

"The new Constitution adopted at the Miami convention in September 1957 and now in effect provides, in part, as follows:

"'All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Where membership dues are being checked off by the employer, pursuant to properly executed checkoff authorization, it shall be the obligation of the member to make one payment of one month's dues in advance to insure his good standing. Thereafter, he shall remain in good standing for each consecutive month for which the monthly check-off is made. Any member failing to pay his dues at such time shall not be in good standing.'

"Members to be in good standing, must comply with this section.

"It is particularly applicable to those members who want to run for office, for the Constitution requires that candidates must be in good standing."

You will note, may it please the Court, that in the first sentence it says "now in effect." This section of the constitution was in effect. It came into effect on January 31st by the first paragraph of the Court order. It was in effect on February 1st and went into effect, without any promulgation, and all members were in default under it. When this was even promulgated, if they called this legal promulgation, the members were already in default, because this didn't set any future date of application, it didn't give reasonable time of promulgation. I would have been in default if I was a member because I hadn't paid my dues on February 1st.

* * * * *

MR. WILLIAMS: It is the March issue, of 1958. And I think in one of the exhibits here -- so that this will be clear, your Honor, because I think that this is very vital. One of the exhibits which went in this morning, at Mr. O'Donoghue's request, is Exhibit No. 26, and in that exhibit it says, referring to people who are on the check-off, if he was on check-off he is considered eligible if his dues were properly checked off for a period of two years prior to nomination or up to April 1, 1958, even though received late by the local union.

So that this was not put into effect, Mr. O'Donoghue, as you can see from your own exhibit, until April 1, 1958.

THE WITNESS: That sentence, Mr. Williams, you are not referring to the application of this particular sentence here. You are going back on the check-off as you construe the old section of the constitution.

MR. WILLIAMS: But the point of this whole letter, which was an opinion of mine written to Chairman Cayton --

THE WITNESS: I am going to read that into the record.

MR. WILLIAMS: Would you please read it in. Because the whole thrust of this was the new constitution which your Honor put into effect by the consent decree of January 1st should be construed liberally to permit good standing and it would not be effective until April 1, until there had been dissemination to the whole membership through The Teamster.

Now, I will take up this Order of Recommendation No. 20. This deals with the election rules and Order of Recommendation No. 20, dated August 19, 1958, re: Rules governing the conduct of local union nomination meeting and election of officers, appointment of committees to confer with Monitors concerning the rules.

The Board of Monitors recommends:

1. General President James R. Hoffa, by August 27, 1958, promulgate for adoption by all local union executive boards the attached "Rules for the Conduct of Local Union Nomination Meetings and Election of Officers."

And, second, by September 15, 1958, the executive boards of all local unions, including those under trusteeship, adopt these rules in accordance with the provisions of Article XXI, Section 5, of the International Constitution.

It is the intention of the Board of Monitors that these rules will remain temporarily in effect until such time as the Monitors recommend the adoption of model provisions for inclusion in local union by-laws. The Board of Monitors also recommends that by August 27, 1958, General President Hoffa appoint a committee to confer with the Monitors and their staff concerning these rules and model provisions for inclusion in local union by-laws.

It is requested that the General President notify the Board of Monitors by August 29, 1958, concerning the promulgation of the rules and the appointment of the committee, and that the General President forward to the Board by September 20, 1958, copies of letters from all local executive boards concerning adoption of these rules.

Now, may it please the Court, these rules are not too lengthy. I am going to read them.

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THE WITNESS: After I read that I would like to give some testimony concerning it.

"Rules governing the conduct of local union nomination meeting and election of officers:

"1. At least one month prior to the nomination meeting, a meeting shall be conducted for the purpose of voting upon rules for the conduct of the election not inconsistent with the International Constitution and these rules, and for the purpose of electing an Election Committee to supervise the conduct of the election. The Election Committee shall be composed of a chairman and four members, none of whom shall be a candidate in the election.

"2. At least twenty (20) days prior to the nomination meeting a list of those members eligible for nomination shall be posted at the Local's office and at barns, warehouses and other places of employment where notices of the Local are posted.

"3. No person who has been convicted of bribery, extortion, robbery, embezzlement, grand larceny, arson, the obstruction of justice, burglary, or conspiracy to commit any of such crimes, shall be eligible to run for office, unless one year has elapsed subsequent to the restoration of his right to vote in elections held under the laws of the State of his legal residence.

"4. Notices of the time and place of the meeting to elect the Election Committee, the nomination meeting, and the election shall be posted at the Local Union's office, at barns and warehouses and other places of employment where notices of the local are posted. Such notices shall also be sent by mail to members of the local union whose addresses are available.

"5. If the eligibility of a member to run for office is contested, the question shall be decided by the Election Committee within 48 hours. The decision of the Election Committee may be appealed to the General President who shall decide such an appeal within seventy-two (72) hours. The Board of Monitors shall be notified of all such appeals and shall make recommendations to the General President concerning them.

"6. Nominations may be made by any member in good standing who attends the nomination meeting. A motion to close nominations shall not be in order until a reasonable opportunity has been afforded for all nominations.

"7. Every member in good standing shall have the right to vote.

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THE WITNESS: "8. A list of the names and addresses of all members eligible to vote in the election shall be compiled no later than the day of the nomination meeting. This list shall be posted at the Local's office and shall be immediately revised to reflect any changes in eligibility that occur after the day of the nomination meeting. No later than the day following the nomination meeting, a copy of the list of the names and addresses of members then eligible to vote shall be furnished to all candidates.

"9. No candidate shall make use of union funds or facilities for his election campaign except on terms of complete equality with all other candidates.

"10. Arrangements for the election shall be made and the balloting shall be conducted by the Honest Ballot Association or the American Arbitration Association in those areas where either of these organizations has facilities to do so.

"11. Absentee voting by mail may be authorized by majority vote of the membership. Absentee voting shall be conducted with proper safeguards by a neutral outside agency, where practicable, or the Election Committee.

"12. Each candidate shall have the right to be present himself or have one observer present at all times during the election, including when the votes are cast and when they are tabulated, provided that such observer shall be a member of the Local Union.

"13. All nominations and election records, including the minutes of nomination meetings and ballots cast, shall be impounded immediately and shall be preserved for a period of at least one year.

"14. Candidates and their observers may challenge the eligibility of voters, and all challenged ballots shall be impounded. Challenges shall be investigated by the Election Committee only if the challenged ballots are sufficient in number to affect the result of the election.

"15. Protests concerning the eligibility of voters, and the conduct and validity of the election shall be promptly decided by the Election Committee. The decision of the Election Committee may be appealed to the General President who shall promptly decide such an appeal. The Board of Monitors shall be notified of all such appeals and shall make recommendations to the General President concerning them. Pending the resolution of such protests by the Election Committee and the General President, there shall be no induction of officers.

"16. These rules, which are intended to supplement the provisions of the International Constitution and By-Laws concerning safeguards for democratically conducted nomination meetings and elections, shall be effective September 15, 1958.

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Under date of September 10, 1958, I received the following letter from Mr. Hoffa -- the order went out on August 19th. We had asked for him to appoint a committee and to meet with us by August 27th.

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This is Board of Monitors' Exhibit No. 60: Martin F. O'Donoghue, from James R. Hoffa; re: Order of Recommendation No. 20.

"Dear Mr. O'Donoghue:

"In your Order of Recommendation No. 20 you have set forth certain rules and regulations and requested that I promulgate them to all local unions and recommend their adoption. I have reviewed these rules and I am of the opinion that some of them are in violation of our Constitution and that others are unworkable in large local unions. However, before I take any action I intend to discuss these rules with our general executive board. As soon as the Board has had an opportunity to discuss these rules, a committee composed of myself, Thomas E. Flynn and Harold J. Gibbons, will be available to meet with the Board of Monitors concerning the adoption of these rules.

"Yours very truly,

"James R. Hoffa, General President."

Now, we received this on September 12th, and it was on the 16th that we met with the General Executive Board, and I would like to introduce into evidence the entire transcript that the International gave me of that meeting before the General Executive Board. And I ask that it be received as Board of Monitors' Exhibit No. 61.

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And on September 10, the same date as the other, I received this letter from Mr. Hoffa.

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"Dear Mr. O'Donoghue:

"This is in reply to your letter of August 20, 1958, in which you enclosed a draft of provisions which are under consideration by the Board of Monitors for inclusion in model local union by-laws.

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"Proposal No. 2. Under this proposal a member would not be deprived of his membership rights until he had been in arrears for three months. The proposal, of course, applies only where there is no check-off agreement. Again, this proposal varies with Article X, Section 5(c) of the Constitution. It is our belief that in order to enjoy the right to vote or the right to attend meetings, if challenged, a member must be in good standing. In order to remain in good standing a member must have his dues paid up.

- - -

"Proposals 3 and 4: These proposals both deal with the payment of dues under a check-off agreement and may be considered together. Under the new provisions in the 1957 Constitution, members under a check-off must pay one month's dues in advance in order to insure good standing. This Constitutional provision, Article X, Section 5(c) is not made dependent upon the check-off -- when the check-off agreement was concluded.

"In addition, this payment of one month's dues in advance does not necessarily protect any employee if his employer is more than one month delinquent. Finally, the amendment of this Constitution by the last Convention can in no way be construed to absolve a member of an arrearage which occurred prior to the adoption of this new Constitutional provision.

- - -

"Very truly yours,
"James R. Hoffa."

Now, that has been received, I believe, as Monitors' Exhibit No.

THE CLERK: 61.

THE COURT: It has been received.

THE WITNESS: Monitors' Exhibit 62.

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THE WITNESS: I would also like to introduce in evidence as Board of Monitors' Exhibit No. 62, a letter to Mr. Hoffa, with a re-draft of the temporary rules of election, which is attached. May that be known as --

THE WITNESS: Your Honor, in oral argument I will go through this promulgation. Besides the mere promulgation. By virtue of the Court's order putting into effect the '57 Constitution, I submit that inasmuch as it was a disqualifying feature that besides the publication there should have been a period of time given these men, possibly three months, to comply, to put it into effect we will say around about May 1st, 1958, ordered every local union to read it at every local union meeting, posted on the boards, and those under check-off -- because it was a penalty to those under check-off, that they had to pay one month's extra dues -- that there wasn't sufficient promulgation, even assuming, arguendo, that it went into effect on April 1st. If I were going to publish an article against the membership and say it was to go into effect on April 1st, become effective, I would have stated that in the article. I wouldn't have stated "now in effect." But, however, that is a point of argument.

First, I will read the letter which is attached to our petition, known as Exhibit No. 26, and which Mr. Williams here, and I thoroughly agree with his interpretation, interpreted the '52 constitution that where a man was under check-off and his dues were not paid by the employer by the first day of the month he remained in good standing, because the employer became the agent of the union to get the dues in on time. We are advised that Mr. Hoffa does not adopt that opinion. And that is one of the questions that is before the Court in this particular matter. Mr. Williams' letter which is attached to the petition known as Exhibit 26 reads as follows:

"April 30, 1958.

"Honorable Nathan Cayton, Chairman,

"Dear Judge Cayton:

"During our conversation of last Thursday, you suggested that I write to the Board of Monitors setting forth my interpretation of the provisions of the new International Constitution relating to eligibility for office, with particular reference to the requirement of 'good standing.'

"The pertinent provisions of the International Constitution are as follows:

"Article II, Section 4. To be eligible for election to any office of a Local Union or the International Union a member must be in continuous good standing for a period of two years prior to nomination for said office and must have worked at the craft as a member for a total period of two years.

"Article X, Section 5(c). All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Where membership dues are being checked off by the employer pursuant to properly executed check off authorization, it shall be the obligation of the member to make one payment of one month's dues in advance to insure his good standing. Thereafter, he shall remain in good standing for each consecutive month for which the monthly check off is made. Any member failing to pay his dues at such time shall not be in good standing.

"As you are aware, the provisions of the old Constitution relating to good standing are being very liberally interpreted, particularly for application to trusteed locals in order to facilitate the nomination and election of officers as a step toward the restoration of local autonomy. Under this liberal interpretation, if a member was not under 'check off,' he must have paid his dues on or before the first business day of the current month, in advance, for a period of two years prior to the nomination. If, however, he was on 'check off,' he is considered eligible if his dues were properly checked off for a period of two years prior to nomination or up to April 1, 1958, even though received late by the local union. In effect, for the purposes of 'check off,' the employer is being considered as the agent of the union and not that of the employee."

MR. WILLIAMS: May I interrupt you there for a moment. So that we will understand each other, your Honor, the April 1 date was selected with particularity as a date by which promulgation would have been made of the new provision in the constitution through the March issue. That was the reason for selecting.

THE WITNESS: You don't say that here, though. You don't put that in your notice. That is all the members had, your notice. If you meant this to be April 1 -- the effect of that, the constitution went into effect January 31, '58. Actually went into effect. They were in default on the next day, February 1. They were in default on March 1. You publish in here it is "now in effect." You haven't said, and you didn't say in promulgation, that this law becomes effective under the date of April 1, 1958.

MR. WILLIAMS: Because the constitution, your Honor, became effective on January 31, 1958, and that provision was in effect but in order to construe it most liberally, to allow as many people as possible who could possibly qualify for nomination to office under a construction of the constitution which had never been given heretofore but which was given for the first time by the administration which went in in January, we set the April 1 date and, in so far as any decisions have been made, everybody who was under the check-off, who comported with this liberal interpretation up through April 1, has been held to be eligible for office.

I think we are talking about semantics, because I always understood you to agree with me.

THE WITNESS: Wait just a minute. I agree absolutely with your construction of the '52 constitution. Mr. Bartosic tells me that Mr. Hoffa does not agree with your interpretation and has so ruled.

MR. WILLIAMS: Every decision that has been made to my knowledge, and I think I know them all, have construed this '52 constitution exactly as it is construed here. And this has applicability, of course, to trusteed locals.

THE WITNESS: As long as we can get that as a matter of record and we get the construction under this provision, very good.

* * * * *

> "Under the language of the new Constitution, there is less room for such a liberal interpretation. A member not on 'check off' must pay his dues on or before the first business day of the current month, in advance, for a period of two years prior to nomination; and a member on 'check off' must make payment of one month's dues in advance to insure his good standing. Thus, a member on 'check off' who fails to make payment of one month's dues in advance

is considred not in good standing if his dues are transmitted to to the Local Union after the first business day of the current month.

"Despite the precise language of the new Constitution, there may, in my opinion, be circumstances in a given case which would excuse a member whose dues are received by the Local Union later than the first business day of the current month. While, of course, each case must be decided on its own facts, the following situations are illustrated of those in which late payment of dues might be excused:

"(1) Where dues are properly checked off in a timely manner and arrive late in the office of the Local Union through the employer's delinquency."

Summa cum laude. Very good.

"2) Where illness makes it impossible for a member to pay his dues in advance.

"In summary, while every effort will be made to provide for the most widespread eligibility, the provisions of the new Constitution must be followed. Consequently, only under such extenuating circumstances will a member be considered in good standing and eligible for office notwithstanding tardy payment of monthly dues."

Now, that was Mr. Williams', that is Exhibit 26 which is attached to the petition.

Now I want to read order of recommendation number -- I want to read this letter which Exhibit 25, and which poses a very good problem on this whole question. It is a letter from Local 100 of Cincinnati, Ohio. It is to the Board of Monitors, to Martin F. O'Donoghue, dated October 23, 1958.

"In re: Eligibility for Office - Local 100, Cincinnati, Ohio.

"Dear Sir:

"Local 100 hereby appeals to the Board of Monitors from a ruling of the General President of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America regarding the application of Amended Article X, Section 5(c) of the International Constitution. The facts giving rise to this appeal are as follows:

"For many years, pursuant to clauses similar to Article X, Section 5(c) of the 1952 Constitution of the International Brotherhood, Local 100 had considered that employees on check-off were deemed to remain 'in good standing' even though their dues might not be received in the office of the Local by the first of the month by reason of the employer's delay in transmission.

"In September of 1948, in order that there could be no question about eligibility under these circumstances, Local 100 amended Article VI, Section 4 of its 1943 by-laws to include the following:

> 'Any member whose dues are paid by the check-off system shall be considered in good standing if, due to conditions beyond his control, his dues are not in the Union office, before the first day of each month.'

"The International Brotherhood concurred in this practice and amendment and said by-laws were approved on August 8, 1949, by John F. English, acting for Daniel J. Tobin, General President. We attach hereto copy of the 1943 and 1948 by-laws, marked Exhibits A and B respectively.

"Again, in August 1953, Local" -- now this is after the '52 constitution -- "Local 100 amended certain portions of its by-laws but retained in Article VI, Section 4 the aforementioned provision regarding check-off. These by-laws were again approved by General President Dave Beck on October 1, 1953. A copy of the 1953 by-laws are attached hereto as Exhibit C.

"In accordance with the foregoing, Local 100 has consistently declared members eligible for office whose checked-off dues may not have been received by the first of the month because of conditions beyond their control.

"In September, 1957, the International Constitution was amended to provide that members on check-off would be required to make payment of one month's dues in advance in order to retain their 'good standing.'

"As you are aware, the District Court of the District of Columbia enjoined placing into effect any actions of the 1957 International Convention, including the Amended Constitution. This injunction remained in effect until on or about January 31, 1958, when an alleged settlement was entered into by the establishment of the Board of Monitors. Thus, the Amended International Constitution did not go into effect until January 31, 1958. At no time prior to on or about March 17, 1958 did the International Brotherhood make any effort to promulgate the aforementioned constitutional amendment regarding check-off dues. On that latter mentioned date, said International did direct an undated mimeographed letter to all local unions regarding said Amendment, copy of which is reproduced in Exhibit D, attached hereto.

"Upon receipt of the aforementioned letter," -- Now I might state, just parenthetically, that letter is exactly what is printed here, right here in the March issue. It didn't say anything about April 1st.

"Upon receipt of the aforementioned letter, Local 100 immediately took steps to advise its members of the Amendment in order that they would be able to comply with same and retain their good standing. It reproduced said letter in poster form (a sample of which is attached as Exhibit D), and on or about April 2, 1958, and thereafter placed these posters on bulletin boards in the barns and shops within the jurisdiction of Local 100.

"Since the aforementioned notice by Local 100 on or about April 2, 1958, the majority of the members complied with the Amendment and did deposit one month's dues in advance. Thereafter, the question arose whether these members who had complied within a reasonable time after notification were eligible for office.

"On September 19, 1958, an opinion was requested from the General President as to the application of the Amendment. A copy of this request is attached hereto as Exhibit E. In response thereto, the General President by letter dated October 1, 1958 rendered an opinion which is attached hereto as Exhibit F. It was the opinion of the General President that under the 1952 Constitution as well as the new Constitution, such persons would not have been considered 'in good standing.' It is from this opinion that this appeal is taken.

"It is the position of Local 100 that in accordance with the 1952 Constitution the members on check-off would be considered in good standing. That Constitution provided that dues 'must be paid on or before the first business day of the current month in advance.' The check-off provisions of the Collective Bargaining Agreements resulted in the employers being the agents of the Local for the collection of such dues. Since the employers did deduct the dues currently, the members would be in good standing. This interpretation of the International Constitution received the approval of General Presidents Tobin and Beck when they approved the by-laws of Local 100, as aforementioned.

"As to the 1957 Constitution, it is the position of Local 100 that due process of law requires that the check-off amendment of said Constitution not be given retroactive effect, but only be considered in effect after a reasonable time after its promulgation on about April 2, 1958; and that all members who complied therewith within ninety days of said promulgation shall be considered to have remained in continuous good standing.

"It should also be noted that a ruling contrary to that requested herein would result in a very substantial majority of the members of the Local being prohibited from running for office in the Local.

"We therefore request that the opinion of the General President be reversed.

"Respectfully submitted,

"Truck Drivers, Chauffeurs and Helpers Local Union No. 100."

Now, the Board of Monitors under date of October 29, 1958, made Order of Recommendation No. 26. And I am going to read that into the record.

* * * * *

The Order of Recommendation No. 26.

"Eligibility for Office in Local Union No. 100, Cincinnati, Ohio.

"1. The Board of Monitors has received a letter from the Secretary-Treasurer of Local Union No. 100, dated October 23, 1958, a copy of which is attached, requesting that an opinion of the General President be reversed, and that all members of the local who complied with the requirements of the 'check-off amendment' of the 1957 International Constitution within a reasonable time of its promulgation be declared to have been in continuous good standing and thus eligible to run in the coming local election. The facts of this case are set forth fully in the letter from Local 100, and apparently are undisputed.

"2. The advance payment requirement of the 1957 Constitution was not promulgated in Local 100 until April 2, 1958, at which time notices were posted informing the members of this requirement.

"3. The Board of Monitors is in complete agreement with the interpretation by the International's General Counsel, expressed in a letter to former Chairman Cayton, dated April 30, 1958, to the effect that under Article X, Section 5(c) of the 1952 International Constitution, a member on check-off would be 'considered eligible if his dues were properly checked off, even though received late by the Local Union.' Past and present by-laws of Local 100, which were approved by former General Presidents Daniel J. Tobin and Dave Beck, also provided that a member on check-off would be considered in good standing.

"4. The local union proposes that all members who have been on check-off and who made one month's advance payment of dues within ninety days of the promulgation of the notice on April 2, 1958 should be considered eligible in the coming election.

"5. The Board of Monitors recommends that the General President grant the request of Local 100, and allow them to adopt the reasonable solution they have suggested for this vexing problem. Since the nomination meeting in Local 100 is scheduled for Tuesday, November 4, it is further recommended that the ruling of the General President be communicated to Local 100 by Monday, November 3.

"Martin F. O'Donoghue, Chairman.

"Member Wells dissents in part from the issuance of this Order for the reasons expressed in his memorandum with respect to the issuance of Order of Recommendation No. 23."

I just have one more exhibit. May this be received as Board of Monitors' Exhibit No. 67.

* * * * *

THE WITNESS: I want to also, your Honor, read a very interesting interpretation by Mr. Hoffa of the present section, Article X, Section 5(c). I read it in my letter. It is the Board of Monitors' Exhibit No. 62. Mr. Hoffa even interprets Section 5(c), Article X, of the present constitution, even if I pay one month's dues in advance, and my employer didn't pay the first month's dues and then didn't pay the second month's dues, I would still be ineligible. Even though there is a written check-off. And he expresses that in these words in this letter.

* * * * *

THE WITNESS: He says this is it. I will read it slowly.

> "This constitutional provision, Article X, Section 5(c), is not made dependent upon when the check-off agreement was concluded. In addition, this payment of one month's dues in advance does not necessarily protect any employee if his employer is more than one month delinquent. Finally, the amendment of this constitution by the last convention can in no way be construed to absolve a member of an arrearage which occurred prior to the adoption of this new constitutional provision."

May it please the Court, that concludes my presentation of the matters that we have here for compliance.

* * * * *

TESTIMONY OF RAYMOND W. BERGAN

RAYMOND BERGAN, SWORN

. . .

DIRECT EXAMINATION BY MR. WILLIAMS:

. . .

Q Before we get into that case, Mr. Bergan, you are a member of the Bar of the District of Columbia, are you not?

A Yes, sir.

Q And you have worked in liaison with the Board of Monitors, representing the International Brotherhood of Teamsters, have you?

A Yes, sir, since about the 15th of April.

Q Has that been throughout the time when Mr. O'Donoghue has been chairman of the board?

A Yes, sir; it predated by perhaps a month or thirty-five days his appointment as chairman.

. . .

Last fall, when the call went out to the 1957 teamsters convention in Miami, Local 183 in Fairbanks, Alaska, and Local 959, in Anchorage, Alaska, were both under trusteeship. Local 183 in Fairbanks selected a gentleman named Robert Dixon as its delegate to the International convention in Miami. Thereupon -- and I am going to have to preface this by saying that I am going to try and give you the facts as they were ultimately found. There was a great deal of confusion along the line as to what actually did happen. But I am going to give you the facts that were ultimately found by the International's appellate panel when they went to hear the case.

When Mr. Dixon went to Miami as a delegate for Local 183, a telegram was received in the campaign ~~headquarters in~~ Miami of Mr. Hagerty, who was another individual contending for the office of general president of the union. He was running against Mr. Hoffa and Mr. Lee and perhaps one or two other candidates at the time. The telegram protested the credentials of Mr. Dixon and stated that his credentials were not proper and that he was not selected in accordance with the constitution of the International Brotherhood of Teamsters.

As your Honor is aware, in Miami at that time there was a great deal of difficulty and notoriety with regard to contested credentials. The newspapers picked up this telegram which had been sent contesting Mr. Dixon's credentials, and it was put on the wire. I believe it was the A.P. wire, but in any event it was put on the news wire. It ultimately reached Alaska and the offices of the Fairbanks News Miner, which is a daily newspaper in Fairbanks. A reporter for the Fairbanks Daily News Miner called one or more of the five individuals who are involved in this complaint and wanted to know what the situation was.

At this point it becomes rather difficult to determine what actually happened but the upshot of it was that a meeting was held in the home of one of these five individuals at which a reporter was present. And certain affairs of the local union were there discussed. Resulting particularly from this action, and perhaps based on certain unhappiness, if you will, and discord which had been a part of that local union for some period of months, charges were preferred against Mr. Benson, Mr. Martin, Mr. Cserepes, Mr. Spivak, and Mr. Gilbert, within the union, under the disciplinary procedure which is provided for in Article XVIII of the Union Constitution. They were tried and they were expelled from their local union.

With particular reference to Mr. Gilbert, in all candor, we must say that Mr. Gilbert was tried in absentia. He was in Wisconsin at the time the trial was held. He did not appear. Needless to say, he did not appear in Fairbanks for the trial.

After their expulsion by the local union, these five individuals addressed a complaint, or a series of complaints, to the Board of Monitors then under the chairmanship of Judge Cayton. And I am not actually sure of the date but it goes back to perhaps early March or -- well, I can check on it. The February 16th is the letter on the first complaint that was received from one or more of these individuals by the old Cayton Board, the Board of Monitors.

At that point the International became interested as we were in the practice of meeting with the Cayton Board frequently and discussing matters of joint interest. We subsequently had a considerable amount of difficulty in finding out just what actually did happen. There were several versions of what had happened, both in Miami and in Fairbanks.

In any event, the case was appealed by these individuals to Joint Council 28 in Seattle, which is the next step in the teamsters' intraunion appellate process. The Joint Council reversed the decision as to Mr. Gilbert, who was the individual who had been tried in absentia, and reversed the decision as to one other of the individuals because there was no showing that he had been connected with the meeting that was held with the newspaper reporter.

MR. O'DONOGHUE: Spivak.

A Spivak. That is right, sir. However, it affirmed the expulsion of the other three.

It was just about at that stage, as I recall, when Order of Recommendation No. 1 dated the 2nd of June was received from the Board of Monitors. And, in essence, it requested that the Joint Council hold a prompt and immediate hearing on the appeal. Well, actually the Joint Council had held it a day or two earlier but no one had received notification of it as yet. It also required or requested that the complete file on the matter, both the local union, and the Joint Council, and whatever was available at the International union, be provided for the Board of Monitors.

That was Order of Recommendation No. 1 dated the 2nd of June. It was followed up by a letter from Mr. O'Donoghue to Mr. Williams dated the 17th of June in which he again requested the general president's office to turn over to the Board of Monitors the complete file and records as then available, and my pencil notation on the bottom of this letter indicates that that was done. It was hand-delivered on the afternoon of the 18th of June.

So, in essence, Order of Recommendation No. 1 contained two primary matters. First, that the Joint Council hold an immediate hearing on the appeal. This had in fact been done and it was delay in communication which necessitated the fact that neither the Board of Monitors nor the International Union nor its general counsel knew about it. And, two, that the entire file as presently constituted be delivered to the Board of Monitors, and that was done.

Q Was that followed by another recommendation from the Board of Monitors, Mr. Bergan?

A That --

Q With respect to this case?

A With respect to this case, yes, sir. That was followed almost immediately, June 4, to be precise, by what was later called Order of Recommendation No. 3.

I must point out at this point that there is no Order of Recommendation No. 2. We go from Order -- I am correct I believe -- we go from Order of Recommendation No. 1.

THE COURT: Is that correct?

MR. O'DONOGHUE: That is correct.

A To Order of Recommendation No. 3. Now, Order of Recommendation No. 3 dealt with the same subject matter.

Q Did it deal with all five of the individuals, or only three of them?

A No, sir. It did deal with all five of the individuals.

I think, if your Honor please, I should read this in its entirety rather than try to summarize what it says because it contains three or four paragraphs.

THE COURT: You may do so.

A It is dated June 4th and it is again with reference to Local 183 in Fairbanks, Alaska.

> "Paragraph 1. The Board of Monitors has reasonable doubt of the validity of the expulsion of Benson, Martin, Cserepes, Spivak and Gilbert by Local Union 183 of Fairbanks, Alaska, and that such expulsion may be reprisals in violation of paragraphs 3 and 13 of the Consent Decree.
>
> "Accordingly, further supplementing our order of June 2 of 1958, we are requesting the General President of the International Union to order a stay of enforcement of the order of expulsion against the above-named individuals and order Local Union 183 that, pending a final review of these expulsion orders by the Board of Monitors, Benson, Martin, Cserepes, Spivak and Gilbert are to be reinstated to good standing membership (all past dues must be paid by these individuals) and the expulsion orders are stayed until the Board

of Monitors rules on the final merits of the case.

"2. The General President shall also order Local Union 183 of Fairbanks, Alaska, to notify the Alaska Ready-Mix Company that Michael Cserepes is in good standing and can be referred for work pending appeal and that the union will give him clearance for all job referrals and job employment opportunities until the Board of Monitors passes on his appeal. Local 183 shall, likewise, clear Benson, Martin, Spivak and Gilbert for job referrals.

"3. Local 183 shall notify the Alaska Ready-Mix Company by letter of the clearance of Michael Cserepes for job referral and Local 183, by letter, shall notify Cserepes, Martin, Benson, Spivak and Gilbert that they are reinstated to good standing membership pending the decision of the Board of Monitors. A copy of the letter from Local Union 183 to the Alaska Ready-Mix Company and copies of the letters by the local union to the five above-mentioned men, notifying them of their reinstatement pending decision by the Board of Monitors, should be filed with the Board of Monitors no later than Friday, June 13, 1958, while the Board of Monitors is in session next week."

So, in essence, the Order of Recommendation recommended, requested that the general president recommend and request that the local union in Fairbanks reinstate the members who had been expelled pending a final determination of their rights on appeal.

Now, your Honor, we had some difficulty with this Order of Recommendation. And the reason I say that we had some difficulty was because, in my own mind, I read the International Constitution, and still do, to require the member to serve out his penalty pending the final appeal on the matter.

I am having some difficulty finding it in the big book. I can find it a little bit easier in the small one because I have it marked.

It is Article XVIII, Section 2 (b), which states that pending any appeal the decision appealed from shall remain in full force and effect.

Now, we ultimately agreed with the Board of Monitors' recommendation in this case, and we did so because we had some doubt in our minds whether this could possibly have been a reprisal within the meaning of paragraph 13 of your consent order, since this whole matter had arisen out of the challenging of the delegate's credentials from Local Union 183.

So, on the 13th of June, President Hoffa sent a telegram to Mr. Jesse Carr, who is the secretary-treasurer of Teamsters Local 959 in Anchorage.

I should point out at this point that between the convention last fall and the time that this matter arose with the Board of Monitors and with the International Union, Local Union 183 and Local Union 959 had merged and they had taken the number of the larger local union, Local Union 959 in Anchorage, so that the telegram was sent to the secretary-treasurer of Local Union 959 of which all of these appellants were members at the time of the middle of the summer. The telegram went:

> "We are in receipt of Joint Council 28's decision on the matter of appeal of A. D. Benson J. Michael Cserepes, and William Y. Martin. This matter is now on appeal to the General Executive Board. Pending a decision by the board I am ordering that all penalties against these individuals be suspended and that they be restored to full membership immediately. In addition, you are requested to notify Alaska Ready-Mix Company that Cserepes is in good standing and may be referred for work. Benson and Martin are also to be cleared for job referral. Please advise by return air mail of action taken, sending copy of your letter to Alaska Ready-Mix Company. The panel of the General Executive Board will hear this appeal before June 25th. You will be promptly advised of the time and place of hearing."

And it is signed James R. Hoffa, General President.

. . . .

Pursuant to the procedure outlined in the International constitution for hearing appeals in disciplinary matters, a panel was appointed by the general president to hear the appeal of these individuals.

. . . .

The panel went to Fairbanks to hear the case and the case was heard on the 15th of July.

. . . .

The recommendations of this panel, which will be presented to the next General Executive Board when it meets. There is no point in reading the entire report, but the recommendation is only one sentence and it reads:

"It is the recommendation of this panel that the decision of Joint Council 28 be reversed and that the charges filed against these appellants be dismissed."

. . .

MR. O'DONOGHUE: I think that is almost stated in our report to the Court as of July 31st or August 1st. All those prior orders, there is no question. The only orders not in compliance are the ones that I testified to.

. . .

(By Mr. Williams) Now, with respect, Mr. Bergan, to the next recommendation, which is called an order by Mr. O'Donoghue, which was received by the International, Order of Recommendation.

A This is Order of Recommendation No. 4. It is dated June 15th and it is with reference to Local Union 107 in Philadelphia.

. . .

During the course of this meeting with the Board of Monitors, it became apparent to me that the monitors were going to insist, and indeed were insisting at that time, that the local union be placed under trusteeship, because the revelations and the testimony and the refusal to testify by the individuals who had appeared before the Senate Select Committee. It was the thought at that time that the president would exercise -- let me back up a step, and say that it was the suggestion of the Board of Monitors at that time that the president would exercise his emergency power under the constitution and put the local union in trusteeship prior to a hearing, as he has a right to do under the constitution when the local situation is so imminently dangerously that it would affect the International Union or the local union in a certain way. It was pointed out by several of the participants at that meeting that this was a procedure that the International Union used only rarely, and it was the contention of counsel for the International Union that since many of the officers of the local union had exercised their rights under the Fifth Amendment before the Congressional Committee that there had been in effect no explanation of what their stand would be, and that prior to any imposition of trusteeship upon the local union, that the individual officers and the members concerned should be given an opportunity to state their position and defense to the charges which had been filed or were about to be filed against them.

As a result of that meeting, and certain preliminary discussions which had preceded that meeting, Order of Recommendation No. 4 was issued shortly after. Perhaps two or three days after that meeting. And I won't read the order. It went into evidence this morning. But in essence, or in summary, it recommended and requested that a panel be appointed to conduct a hearing to determine whether trusteeship should be imposed upon Local Union 107 and that the panel should contain one public member of suitable stature. Mr. O'Donoghue in his order, or the Board of Monitors in their recommendation, suggested two possible individuals. We finally agreed that the public member on the panel would be F. Joseph Donohue, a member of the Bar of this Court, former Commissioner of the District of Columbia, who agreed to serve as the public member on this panel to hear charges leveled against 107 and determine whether the union should be placed in trusteeship.

Q Prior to this time had there been any instance which you or your associate counsel had been able to find wherein a non-member or a non-lawyer affiliated with the International Teamsters had served on a panel trying a member or an officer?

A This was the first instance that we knew of in which a complete outsider had sat on a panel. Now, there are instances, frequent instances, in which International counsel have sat on the panels and I am informed that the economist or the statistician, Mr. Weiss, has on occasion sat on International panels. But we have to this day not been able to find an instance in which a complete outsider sat upon a Teamster hearing panel.

Q Mr. O'Donoghue referred to instances where Mr. Gerard Trainor had sat on such panels. Would you identify Mr. Trainor?

A That is quite correct. Mr. Trainor sits on counsel's recommendation. He is House member.

Q Sits as legal panel?

A Well, he sits as member of the panel, yes.

. . .

At that point, it was discovered, or at least at that point it was brought to my attention that the bonding company that had fidelity bond coverage on Mr. Cohen and Mr. Grace, the officers, the secretary-treasurer and the president of Local Union 107, had canceled their fidelity bond shortly after the hearings of the Senate Select Committee, and that Mr. Cohen and Mr. Grace were at that point without a bond.

Now, that gets into Order of Recommendation No. 5. So perhaps we can just leave that and come back to it and stay with this Philadelphia situation at the present time.

Q Let me ask you: During Mr. O'Donoghue's testimony he said that Mr. Cohen and Mr. Grace were not covered by a fidelity bond until the blanket coverage was imposed on all the officers of locals throughout the country by a blanket policy that went into effect a couple of months later. What is the fact on that?

A Mr. Cohen and Mr. Grace both secured, through the good offices of the general secretary-treasurer and the comptroller of the International Union, surety bond coverage on the 27th of June.

Q How soon was that after you had first learned that their fidelity bonds had been in the first instance canceled?

A I would say that it was a matter of perhaps a week or ten days.

Q Is it a fact that they were not covered by a fidelity bond for a period of so long as two months?

A No, sir, that is not a fact.

Q When did the blanket coverage policy for all officers of locals, throughout the country in the International Union, go into effect?

A I can't give you right offhand the precise date but I would say it was about the 15th of September.

. . .

Q Will you go on with the 107 story.

A On September 2nd, the survey which Price Waterhouse had made of the books and records of 107 in the hands of the Senate Select Committee was transmitted to the International Brotherhood of Teamsters by Mr. O'Donoghue. I believe a copy of the letter of transmittal and a copy of the Price Waterhouse report both went into evidence this morning. I read the copy. I read the Price Waterhouse report. I also had read the thirteen volumes of testimony before the McClellan Committee and Mr. O'Donoghue's or the survey that was prepared by the staff of the Board of Monitors, the summary of the McClellan Committee charges. Frankly, I was disturbed by the fact that the three did not read alike. There were, I felt, basic inconsistencies between the three. And I did not think that it was possible that a panel hearing based on these factors, the Price-Waterhouse report, the Senate Committee hearing, could properly be conducted as long as, at least as long as in my opinion, that they were poles apart in what their final determination and conclusions were.

To that end, with that in mind, the panel was sent to Philadelphia on the 11th, or was scheduled to be sent to Philadelphia on the 11th of September. Thursday, September 11, 1958. And Mr. Cohen, Mr. Grace were advised by letter dated September 8 that this panel was coming to make a preliminary survey of the situation. There was a three-day interval between the letter of September 8 and the letter of September 11. In that interval the Court of Common Pleas in Philadelphia and obtained a preliminary injunction, or, at that stage it was a show-cause order, to why the International Union and the members of the panel should not be enjoined from holding the panel, or holding the investigation into the affairs of their local.

. . .

Very roughly, they break down into two classes: one, that the action of the president of the International Union, or that the action of the International Union is taking, is being taken solely because he was recommended or requested to take such action by the Board of Monitors and that the Board of Monitors and the general president had prejudged the case in that they had determined that trusteeship would be imposed upon the local union. In other words, that the hearing was just a formal trial prior to a hanging, i essence is what it was. The second basic allegation was that since September 26, 1957, almost nine months, all of the relevant books and records of the local had been in the hands of the Senate Select Committee or the Bureau of Internal Revenue or the Treasury Department, or some other Government agency.

Counsel for the International appeared in Philadelphia on behalf of the International at the hearing on this preliminary injunction. However, ultimately, on the 22nd day of September, a preliminary injunction was issued in the case, forestalling the International Union from conducting, at least temporarily, any further hearings on the trusteeship matter of 107.

. . .

Q You know that Mr. Edward Carey of this Bar was selected by the International to file a lawsuit to get these books back so that we could proceed with our business, of 107?

A Yes, sir.

. . .

Q Now is it necessary that charges be filed under the constitution to put a local trusteeship?

A The constitution of the International is silent on the necessity for charges against a local union before it is placed under trusteeship. And it has been the constant practice within the International that the only thing prior, the only preliminary step, to putting a local union under trusteeship has been a hearing, at which all interested members of the local are given an opportunity to appear and present their reasons why it should be placed under trusteeship, why it should not be. And other International officers in the area are given an opportunity to state what should be the disposition of that local union, whether it should be placed under trusteeship or whether it should retain its autonomy.

Q Would you read that section from the constitution, if you have it available.

. . .

Now, Mr. O'Donoghue called the Court's attention to a letter which, I believe, was dated September 8 which went out over Mr. Hoffa's signature, which was offered in evidence. Do you have a copy of that letter?

A The letter of September 8 to Mr. Cohen.

Q Do you recall what exhibit that letter bears?

A I am sorry, I don't. The date is September 8. It would be one of the early exhibits that came early in Mr. O'Donoghue's testimony.

Q Exhibit 31. Will you say who prepared that letter, Mr. Bergan.

A That letter was prepared jointly by Mr. Joe Connor of the International office and myself.

Q And would you tell the Court the purpose you had in mind when you prepared that letter.

A Well, as I indicated, I was disturbed, as an attorney, with the differences between the Price-Waterhouse report and the hearings before the Senate Select Committee. This letter was merely to indicate to the individuals in Philadelphia, individuals concerned, trusteeship proceedings in Philadelphia, that the panel was going to go there to conduct what might properly be called a pretrial hearing, for want of a better phrase, to see what, in effect, what the lay of the land was. There is no provision for that. No specific provision for that in the constitution. That, ofcourse, is true. But the 107 situation and the interest of the Board of Monitors in the 107 situation made it a very, I think, peculiar and different situation.

. . .

As a matter of fact the injunction which was granted in Philadelphia was not granted on the ground of any denial of any due process as a result of that letter, it was granted because there were not any books for the defendants to use in the case; isn't that so?

A It is hard to say precisely why the injunction was granted. There were two grounds alleged in the complaint for granting an injunction. One of them was the absence of the books and records and the other one was in effect the general president was not exercising a freehand; that he was being dictated to by the Board of Monitors.

. . .

TRANSCRIPT OF PROCEEDINGS

Nov. 7, 1958.

Testimony of Raymond Bergan

Putting it very briefly, Order of Recommendation No. 5 was that the International Union enforce the specific provision in Article X, Section 8 of the constitution which relates to surety bond coverage.

* * * * *

With respect to the Philadelphia officers? The monitors drew to our attention the fact that the officers of Local Union 107 had had their bonds canceled shortly after their testimony, their appearance before the Senate Select Committee, and they asked that within a week or ten days that the officers of the Local, particularly secretary-treasurer Cohen and President Grace, either post a suitable bond or make arrangements to post cash collateral in the matter.

I made arrangements -- I took part in making the arrangements -- to have suitable cash collateral in the amount of $25,000 each posted by these two individuals, along with that and at the same time Mr. Mullenholz, who was the comptroller of the International, was using his efforts to have the individuals bonded by a recognized bonding company. Both efforts reached fruition at just about the same time and within a week or ten days after the monitors had made the recommendation with regard to the Philadelphia individuals, they were both covered with a surety bond in the amount of $25,000.

* * * * *

What action was taken with respect to blanket coverage of all officers of the International Union and the local level?

A We discovered, after the monitors had called this particular section to our attention, that the records at the International with regard to surety bond coverage were incomplete. So the first step was to send a bulletin to each local union asking that local union to provide the International office with a copy of all bonds presently in effect covering the officers or the employees of that local union. That bulletin went out over the signature of John English, the general secretary-treasurer, on the 13th of June.

* * * * *

It is on the stationery of the International Brotherhood of Teamsters, the office of John F. English, the General Secretary-Treasurer, and it is dated June 13th, 1958. It is headed "Bulletin."

"Reference is had to Article 10, Section 8 (a) of our International Constitution, which concerns surety bond coverage of local union secretary-treasurers, business representatives and all others handling funds or property of the local union. Over and above those individuals in your local union who are presently covered by a surety bond and of which there is some evidence in this office, would you please send to this office at your earliest convenience a copy of all bonds that are presently in effect in your local union.

"It is imperative that the bond copies be in this office not later than June 30, 1958."

* * * * *

A On the same day, June 13th, another bulletin from the office of the General Secretary-Treasurer was sent to local unions. This particular bulletin was sent to those local unions for which there was no record at the International of any bond coverage. This first bulletin had been sent to those locals for which there was some evidence that the International Union -- it may have been out of date or it may have indicated that there was only one person in the local covered. This second bulletin went to all those local unions for which there was no record for bond coverage at the International. It, too, is dated the 13th of June. It was sent at the same time as the other one.

* * * * *

This is also on the stationery of the International Brotherhood of Teamsters, the office of John F. English, the General Secretary-Treasurer, dated June 13, 1958, and headed "Bulletin".

"In reviewing our files we do not find evidence that your local union is in compliance with Article X, Section 8 (a), of the

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International Constitution. This section has reference to a surety bond which the local union secretary-treasurer, business representative, and all others handling funds and property of the local union must procure. Lack of a copy of an existing bond in this office does not necessarily indicate that the above-listed individuals are not covered by a suitable surety bond since it is entirely possible that such coverage was obtained locally without a copy of the bond being sent to this office.

"Inasmuch as compliance with the constitution is compulsory, may I ask that you submit to this office at your earliest convenience a copy of such surety bond or bonds that are in force. It is imperative that compliance with this request be not later than

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June 30, 1958."

And again it is signed John F. English, General Secretary-Treasurer.

* * * * *

Following that, for a period of several weeks, local union bonds began arriving at the International office in large quantities. The bulletins were mailed to the local unions on the 13th of June and between then, and, well, within the next six weeks, I and Mr. Mullenholz, comptroller of the International, and Mr. Casey, one of his assistants, had two conferences with the Board of Monitors during which we indicated that we were presently making an effort to up-date the records at the International with regards to the surety bond coverage of the local unions, that this was turning into a much larger task than had originally been anticipated but that our preliminary survey, in the course of those four or five weeks, indicated that most of our local unions were in very substantial compliance with the section of the constitution which required surety bond coverage for all officers and individuals who handled money and property.

Then in the month of -- the latter part of August, the early part of September, the International made arrangements with the General Insurors, Incorporated -- that is an insurance company in St. Louis, an underwriter for Lloyd's of London -- to provide general surety bond coverage for every person, both at the International level, at the level of the conferences, the councils, the local unions, and various joint committees for all persons who handled money or property. By this blanket position bond, the individuals who hold these offices are covered notwithstanding the fact that the individuals may change from time to time. It is the position which is covered by this blanket surety bond coverage. The General Executive Board meeting on the 4th of September approved this bond coverage. It went into effect immediately so that, from the 4th day of September 1958, every person who handles money or property for the International Union, for any of the area conferences or the joint councils or any of the local unions have been covered by a surety bond in the amount of $30,000.

Q Does that cover International officers?

A It covers International officers, yes, sir.

Q Is there anyone in the whole International who handles money who is not covered by this bond?

A We tried to write this bond as broadly as possible. So to the extent that the English language is capable of so doing, there is no one within the International who handles money who is not covered by this bond.

* * * * *

Q Now, at the same time as the recommendation came out with respect to fidelity bond coverage, was there a recommendation concerning trusteed local unions?

A There was. That is listed as Order of Recommendation 5-A and it is dated June 17, 1958. I believe it is the same date as the last one. That Order of Recommendation 5-A dealt with the problem of trusteed local unions.

Q What was that recommendation?

A The recommendation carried with it two parts. The major part of the recommendation, if I may characterize it in that manner, was the request from the Board of Monitors that the International Union withhold, for the time being, the arrangements for any elections in trusteed locals prior to the return of those local unions to autonomy. That was done almost immediately. Since that time there have been no local unions released from trusteeship.

* * * * *

The monitors requested on the 17th of June that the General President's office withhold setting up any election dates with regard to other trusteed locals pending an opportunity by the Board of Monitors to consult with the General President and the general counsel relative to establishing uniform rules and regulations on the election procedures in trusteed locals.

The second part of the recommendation was a request -- in effect, it was notification to the International Union that Mr. William O. Humphrey was being sent as a field investigator for the Board of Monitors to Local 245 in Springfield, Missouri, and it was a request that the International Union write a letter to the authorities at

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at Local 245 and tell them that Mr. Humphrey was coming and ask them to provide him with cooperation and any assistance that he may require in his activities.

Q Was such a letter written?

A The letter was written. Unfortunately, I have been unable to find a copy of it.

* * * * *

Is there anything in Order of Recommendation No. 5-A with which the International Union, its officers, did not comply?

A No, sir; there was never anything brought to our attention with which we did not comply.

* * * * *

That would have been Recommendation No. 6; yes, sir, it was. It was withdrawn.

* * * * *

The next document, which is tabbed Order of Recommendation No. 7, is dated the 19th of June and it deals with the employment of an executive assistant for the Board of Monitors in addition to the employment on a per diem basis of Mr. Humphrey as a field examiner.

Q Was there agreement by the International that Mr. Humphrey might be employed at a per diem?

A There was.

Q What was the per diem to be?

A I believe it was $75 a day plus expenses.

Q Was there agreement by the International that the Board of Monitors should hire an executive assistant?

A There was.

Q Was an executive assistant hired?

A He was.

Q Have other administrative assistants since been hired by the Board of Monitors with the knowledge and acquiescence of the International?

A There have been two other administrative assistants in addition to the executive assistant hired by the Board of Monitors.

I don't use those phrases to differentiate between them but there have been three assistants hired by the Board of Monitors since that time.

Q Can you state for the record what the annual cost of the personnel retained by the Board of Monitors is?

A The annual cost of their three administrative or executive assistants, plus a secretary which they employed pursuant to the authority, pursuant to an agreement in the month of July, would be in excess of $25,000 on an annual basis.

* * * * *

Q Now, directing your attention to Recommendation No. 8, with respect to 282 in New York. Will you tell the Court the nature of that recommendation, the background against which it was made, and what was done.

A Local 282 is another one of the large local unions in the International Brotherhood of Teamsters. It is located in New York City and its principal executive officer is John O'Rourke, who is the vice president of the International Union.

Q Do you know the size of this local?

A I don't know the size right offhand, no, sir. I would assume that it is in the neghborhood of 18,000. But Mr. Schmidt would probably know it better than I do.

MR. SCHMIDT: Twelve thousand, is my number.

Q (By Mr. Williams) Take Mr. Schmidt's figure.

A Sometime in May, in April or May of this year, the membership of Local Union 282 voted at a membership meeting to hold meetings during the summer months. Now, there is authority in the International Constitution, whereby a local union, with the acquiescence of its membership and the International Union, may suspend meetings during the months of June, July and August, during the summer months. In Local Union 282, the membership had voted at a regular meeting that they would hold meetings during the summer of 1958 because there were several important contracts that were coming up for renegotiation toward the end of the summer; contracts contained apparently health and welfare coverage, and matters of that nature which were very important to the membership of the local union. Notwithstanding this vote of the membership, the officers of Local 282 advised the membership that there would be no meetings during the summer months. A group of the members of Local 282 protested to the Board of Monitors. The Board of Monitors held a hearing in the offices of the International Brotherhood of Teamsters, at which I was present. The minute of the meetings, membership meetings of the local union in New York City were offered. They were examined. A copy of the by-laws of Local Union 282 was examined. It became apparent that the membership meetings during the summer months in Local Union 282 had been improperly canceled. When that became so obvious on the basis of the presentation that was made, Mr. Hoffa, on the 12th of July, wrote the following letter to the secretary-treasurer of Local 282 in New York City.

* * * * *

Q What was done with respect to the summer meetings of 282 after this letter was received?

A To the best of my knowledge they were all held, starting with the July meeting. We have never heard that following the July meetings any of the summer meetings were canceled.

* * * * *

Now, thereafter did a specific recommendation come from the board regarding fidelity bond coverage for 107?

A Yes, sir. That would be Order of Recommendation No. 10.

* * * * *

(By Mr. Williams) I ask you if you will read to the Court that recommenation.

A This is a recommendation dated the 27th of June from Martin F. O'Donoghue, Chairman of the Board of Monitors, to James R. Hoffa, International President of the International Brotherhood of Teamsters.

"Re: Local Union 107, Philadelphia, Pennsylvania.

"The Board of Monitors voted at a meeting held on Monday, June 23, that General Secretary-Treasurer John F. English notify Local Union 107 that the bond of Raymond Cohen, financial secretary-treasurer, was canceled by the Maryland Casualty Company on October 24, 1957, effective 35 days thereafter.

"The records of the general office of the International Brotherhood of Teamsters on June 23, 1958, disclosed the Financial Secretary Cohen of Local 107 had no surety bond as provided by the constitution. The record reveals for the past seven months Raymond Cohen has fruitlessly endeavored to secure a surety bond without success.

"Accordingly, the Board of Monitors recommends to General Secretary English that Raymond Cohen, Financial Secretary-Treasurer, and Joseph Grace, president of Local 107, place a surety bond in the sum of $50,000 by Monday, June 30, or other suitable collateral as provided by Article X, Section 8(a), of the constitution. That if Raymond Cohen or Joseph Grace cannot secure surety bond by June 30, they are in lieu of said surety bond to place cash collateral in the sum of $25,000 for Raymond Cohen and cash collateral in the sum of $25,000 for Joseph Grace.

"In the event that Cohen or Grace fails to place either the surety bond or the cash collateral, it is recommended that Article X, Section 8 (b) of the constitution be strictly enforced and that they be automatically removed from office."

It is signed Martin F. O'Donoghue, Chairman of the Board of Monitors.

Q What was done with respect to that recommendation?

A The recommendation is dated the 27th of June. I had been informed by the board sometime that week, I would say within a week before that probably, that the recommendation was forthcoming. I had in that time been working myself, with Mr. Cohen, Mr. Grace, and other officers in 107, to provide a cash collateral for the two officers in the amount of $25,000 and arrangements had been made to have that posted. At the same time, as I was making these arrangements, Mr. Mullenholz, the comptroller of the International Brotherhood, was using his good offices to attempt to secure surety bond coverage. As I indicated earlier, these efforts both came to fruition about the same time. Mr. Cohen and Mr. Grace received a surety bond which was effective on or about 27th of June. It was two or

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three days before the date set by the Board of Monitors in their recommendation for compliance. The bond was in the amount of $25,000 for each individual.

Q Was there anything with which the International did not comply -- Recommendation No. 10?

A The International secured a $25,000 bond for each of the two individuals. The monitors had recommended a $50,000 bond for each of the two individuals. At the present time, both of them are covered by the blanket bond of $30,000.

Q Was the $50,000 recommendation a recommendation for the two of them or individually?

A No, I understood it as individually. I believe -- may I see that Mr. Williams? I believe there is a subsequent part to that recommendation, if I am not mistaken. No, I am sorry. It is another one I was thinking of.

MR. O'DONOGHUE: We agree to accept the $25,000. Mr. Bergan will remember that, for each.

THE WITNESS: I think that is right; yes.

Q (By Mr. Williams) To clear that up in the record, did you have a conversation with anyone on the board regarding the adequacy of the bond?

A My memory is jogged by Mr. O'Donoghue. I believe that we -- they agreed that the $25,000 bond was sufficient.

Q So that there was compliance with the recommendation on this matter?

A To that extent, I believe so.

* * * * *

MR. O'DONOGHUE: There was compliance with the order; that is stipulated. All the other orders, other than the 10.

* * * * *

Have you personally checked on that bond yourself with the representative of the surety company which wrote it?

A I did not check personally. Mr. Mullenholz checked personally yesterday.

* * * * *

MR. WILLIAMS: We can produce the bond if it is of interest here.

MR. O'DONOGHUE: I think it would be very interesting. This is the first time I have heard this, inasmuch as Mr. Fairbanks and Mr. Rounds were the officers and I had Mr. Gibbons before the Board of Monitors and I asked him on this particular thing, before he left for Seattle, where there was a meeting, after Mr. Hoffa's acquittal in New York, around that time. This is the first time that this theory that this bond covered Rounds and Fairbanks; that it covered Gibbons there is no question.

* * * * *

MR. WILLIAMS: Your Honor, we will produce the bond and offer it, and it is our information from the bonding company that all agents of the trustee were covered at the time. The bond will speak for itself. If necessary, we can have somebody from the bonding company here.

Q Now, what was done with respect to the election at 245? Was it held?

A The election was not held, no, sir. The election was canceled immediately. It was canceled by a telegram dated June 25th.

* * * * *

The wire in substance ordered the cancellation of the election and the nominations which were a preliminary to the election.

Q And that was done in accordance with the recommendation of the Board of Monitors?

A Yes, sir.

Q And the recommendation was followed, was it not?

A That recommendation was followed.

Q And it was likewise followed by Local 245?

A The election was not held, has not been held.

Q Now, was a letter sent to Local 245 with respect to an audit by Price Waterhouse?

A Yes, sir. As a matter of fact there were several letters sent in that regard.

* * * * *

Will you read that letter to his Honor, Mr. Bergan.

A This is dated July 29, 1958, Mr. A. J. Round, the Acting Secretary Treasurer of Teamsters Local Union No. 245.

"Dear Sir and Brother:

"This is to advise you that in conformance with our policy of cooperation with the monitors, we have agreed to the auditing of your Local's books and records by Price Waterhouse.

"We would appreciate your full cooperation with the auditors in this matter."

And it is signed: "Fraternally yours, James R. Hoffa."

* * * * *

This is dated August 5th, 1958, and it is addressed to Mr. A. J. Round, Business Representative of Teamsters Local 245.

"Dear Sir and Brother:

"The Board of Monitors has proposed that certain local unions be audited by Price Waterhouse and Company, the auditing firm employed by the monitors to assist them in making recommendations to the International.

"In accordance with this procedure a local representative of Price Waterhouse will visit your office shortly to initiate an audit of your books and records. Please show every courtesy to this individual and provide him with all the available information and any assistance he may require."

And it is signed: "Fraternally yours, James R. Hoffa, General President."

* * * * *

This is a telegram, date-marked Springfield, Missouri, September 2, 1958. It is addressed to Harold J. Gibbons, Executive Vice President, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. It is from A. J. Round, the Acting Secretary-Treasurer of Local Union 245 in Springfield. It reads:

"We have refused to have the books audited until a representative of this union has a personal interview with the monitors."

And it is signed A. J. Round, Acting Secretary and Treasurer.

* * * * *

Now, was there in the possession of the International, at this time, an audit of 245 of recent date?

A No, sir. There was not an audit of the local union available at that time. There was available a monthly financial statements dating back perhaps two and a half or three years.

Q Can you tell us for how long they had been sent to the International and how far back our records went?

A We have these monthly financial reports dating back to December of 1955. I don't know when they were received by the International Union. I do not -- I am sorry. I do know that they were received or packaged sometime during the early summer and provided for the Board of Monitors and the Price Waterhouse representative.

* * * * *

Now, as of now, Mr. Bergan, has there been to your knowledge an audit of 245?

A There has not.

Q Will you explain that.

A The last recommendation, the last letter from the general president --

Q Was that upon an instruction?

A Yes, sir. It instructed the officers to cooperate with Price Waterhouse, was mailed on the 11th of September. Toward the end of September the validity of the entire consent order was -- a question was raised with regard to the validity of the entire consent order when the monitors filed their amended petition for construction. With that issue having been raised for decision by the Court, the general president did not feel it proper that he exercise his power to force the local union to undergo an audit by an outside agency until these questions were resolved.

* * * * *

Now, Mr. Bergan, what was the next recommendation that came from the Board of Monitors following the recommendation on 245?

A The next recommendation is No. 12. And it is dated July 10, 1958, and it is with reference to John J. McNamara, president of Local Union 295 and secretary-treasurer of Local 808 in New York.

Q What in substance was the recommendation made there?

A McNamara had been convicted in the Courts of the State of New York of extortion shortly -- sometime in 1957. The recommendation in substance was that McNamara be requested by the general president to take a leave of absence from his offices in the local union until his appeal had been decided.

It further recommended that Price Waterhouse be hired to make a one-year audit of the books, the finances of Local Union 808.

* * * * * *

This is a telegram from James R. Hoffa, General President of the International Brotherhood of Teamsters, to Mr. John J. McNamara, Secretary Treasurer of Teamsters Local 808. And it reads -- it is dated August 12, 1958. And it reads:

> "In accordance with our telephone conversation of last night and pursuant to the recommendations of the Board of Monitors, I am asking you to take a leave of absence as president of Local 295 and secretary-treasurer of Local 808 until your appeal, now pending in the Supreme Court of New York, Appellate Division, has been decided."

It is signed James R.Hoffa, General President.

* * * * *

Exhibit 36 is a letter dated August 5th, 1958, from General President Hoffa to Mr. Michael Burton, Secretary Treasurer of Teamsters' Local 295 in New York City. It reads:

> Dear Sir and Brother: The Board of Monitors has proposed that certain local unions be audited by Price Waterhouse and Company, the auditing firm employed by the Monitors to assist them in making recommendations to the International. In accordance with this procedure, a local representative of Price Waterhouse will visit your office shortly

to initiate an audit of your books and records. Please show every courtesy to this individual, and provide him with all available information and any assistance he may required.

And it's signed -- Fraternally yours, James R. Hoffa.

* * * * *

Exhibit 37 is also dated August 5th, from General President Hoffa to Mr. John S. Mahoney, Secretary-Treasurer of Teamsters' Local 808, in New York City. The letter is one paragraph, and is exactly identical to the other one.

* * * * *

Q Do you know if McNamara, after he received the Hoffa wire, took that matter up before his membership, the matter of his resignation?

A McNamara -- yes, I do know he did. McNamara tendered his resignation to the membership of Local 808 on either the 14th or 15th of September -- I believe it was the evening of the 14th of September -- and our report was that the membership had refused to accept his resignation.

* * * * *

(By Mr. Williams) What action was taken by the International Union with respect to Recommendation No. 13?

A It was discovered almost immediately that the funds of the two unions had actually be co-mingled, at least to a certain extent. So an alternative proposal was made by the International to the Board of Monitors, which they agreed to accept. The alternative proposal was that the combined Locals would continue to operate, and that if, at a later date, the Locals were separated, that we would be able to determine by some arithmetical formula the amount of money which had been in Local 183, less its share of operating the combined Local, and place that diminished amount back in the treasury of Local 183, if it was ever established as a separate Local. There were a couple of discussions, both between Mr. Gibbons and Mr. Hoffa -- Mr. Gibbons and Mr. O'Donoghue, and myself and Mr. O'Donoghue on this matter. The Board of Monitors agreed to this counter proposal, if you will, and Mr. Hoffa adressed a letter to Mr. O'Donoghue on the 23rd of July with regard to this procedure.

* * * * *

What was the next recommendation that came from the Board and when did it come, Mr. Bergan?

A The next recommendation is dated July 25, 1958. It is Order of Recommendation Number 14, and it deals with the so-called Price-Waterhouse report.

* * * * *

What, in substance, was that recommendation, Mr. Bergan?

A The substance of the recommendation was that the attached Price-Waterhouse report, a copy of which was attached to the Order of Recommendation, was to be placed on the agenda of the next meeting of the General Executive Board for discussion with people from Price-Waterhouse and the Board of Monitors and the General Executive Board.

Q What, in substance, was the report of Price-Waterhouse, Mr. Bergan, preliminary to what I am going to ask you, as to the manner in which the recommendation was handled?

A The substance of that report was that there was a need, a necessity, for some kind of membership record system at the International, so that the International would be able to have some record of membership in the various Locals in the country.

* * * * *

Q Do you know whether or not there have been conferences with Price-Waterhouse representatives participating, with the General Secretary-Treasurer and/or representatives of his office?

A I know there a series of conferences prior to the issuance, prior to the issuance of the Price-Waterhouse report, in which various systems which the International utilized were discussed by the representatives of that office. To my knowledge, I know only one meeting following the issuance of this report, and that was the 15th, or the 16th, or the 17th of September.

MR. O'DONOGHUE: Correct.

* * * * *

Q Now, with respect to the 16th meeting, do you recall for what purpose that meeting was called?

A The Executive Board Meeting of the 16th, a specially called meeting, was called to discuss only two things: Do you recall the West Coast Strike was in progress at that time? It was called to discuss that, and it was called to discuss the calling of a new Convention next year.

Q Now, was it called, Mr. Bergan, after a letter from Mr. O'Donoghue, requesting permission to meet with the Board to discuss this matter of the Convention?

A Yes.

* * * * *

MR. WILLIAMS: I'll stipulate for the purpose of this record, that we'll put this on the agenda immediately, if that's the thrust of your objection on this order. And, if necessary, have a meeting earlier to have a meeting with Price-Waterhouse on this whole matter.

MR. O'DONOGHUE: That is what we have been waiting for, and I stated to the General Executive Board the night of September 16th.

MR. WILLIAMS: There's certainly no problem on that.

* * * * *

THE WITNESS: Recommendation Number 15 is entitled: The Procedure for Processing Orders of Recommendation. The Board of Monitors recommends that General President James R. Hoffa establish the following procedure for processing all future order of recommendation issued by the Board of Monitors to the International Union:

One. A written acknowledgment of receipt of each order of recommendation shall be made by an International officer immediately upon receipt of each order; and

Two. A detailed written report as to the extent of compliance with each order of recommendation shall be made by an International officer no later than the compliance date set in each order. It is requested that a report concerning the adoption of this procedure be sent to the Board of Monitors by August 22, 1958.

Q Was that done, Mr. Bergan?

A There may have been one or two instances in which the letter of acknowledging acceptance was combined with the report on what was done. There may also have been one or two instances very recently when there was no acknowledgment of receipt. Other than that, it has been complied with, to my knowledge. I would say it was an oversight in the recent week or two, that the last two or three, I don't believe, have been acknowledged.

Q Do you recall, Mr. Bergan, and maybe we can stipulate on this, but I will ask you whether you recall that a meeting of the General Executive Board was scheduled for September 3rd for a meeting with the Board of Monitors that was subsequently cancelled by virtue of the fact that Mr. Schmidt had to be on the West Coast?

MR. O'DONOGHUE: Just a minute. Let's get our facts straight. You called on that date, either you or Mr. Bergan, and asked for a meeting of the Board of Monitors, and Mr. Schmidt left that afternoon at 3:30 to go to California. Then, later that afternoon, through a newspaperman, I heard that at this meeting that was called of the General Executive Board you were going to call time for the convention. That's when I sent my letter up to you about seven o'clock in the evening. You told me the date, either your or Mr. Bergan, the morning of September 3rd, around ten or eleven o'clock. There was no agreement that we would appear before any --

MR. WILLIAMS: But there was an invitation, I think, to appear on September 3rd.

MR. O'DONOGHUE: Conceded. We were asked on the 3rd to appear the night of the 3rd.

MR. WILLIAMS: When the Board was meeting in town.

MR. O'DONOGHUE: Right.

MR. WILLIAMS: That meeting was never held.

MR. O'DONOGHUE: Mr. Schmidt was en route to San Francisco. The Board of Monitors couldn't be there.

* * * * *

Q Now, in the Order of Recommendation of the Board of Monitors, is the International directed to retain one of three specified outside counsel?

A Yes.

Q Who are they?

A The three names mentioned are Dean Frank Dugan of Georgetown University Law School; Senator Abe Murdock, former Senator Abe Murdock, of Calvert Street, Northwest, in Washington, and Guy Farmer of Steptoe & Johnson, a law firm here in the city.

Q Now, with respect, Mr. Bergan, to the Michigan Conference Health and Welfare Fund, would you tell his Honor whether that is a fund over which the International Brotherhood of Teamsters has control?

A It is not.

Q Would you --

A It is a fund administered jointly by trustees, an equal number of trustees from Michigan Teamster Unions and a number of trustees from companies which do business and have contracts with those Teamster Unions. It is a separate entity from the International Brotherhood of Teamsters, a separate entity -- it is not a subordinate body of the International Brotherhood of Teamsters. It is ruled entirely by its Board of Trustees.

Q Are these funds in any way under the control of either the International or the Central States Conference or any local or subordinate body of Teamsters Union, as such?

A No.

Q Is this a separate and independent fund created for health and welfare by employees and administered by four trustees?

A I don't know the number of trustees, but it is a separate fund, administered jointly.

* * * * *

Q (By Mr. Williams) Were charges filed against Feldman by the President, Hoffa?

A Yes, the President filed charges against Feldman.

* * * * *

THE WITNESS: This is a letter, dated August 28, 1958, from General President Hoffa to Mr. Samuel Feldman, Business Agent of Local Union 929 in Philadelphia.

Dear Sir and Brother: At the request of the Board of Monitors, and in view of the evidence before the Senate Select Committee, that you offered to settle a labor dispute upon payment of fifty thousand dollars, I am suspending you as Business Agent of Local 929 until charges which will be preferred against you can be heard. A copy of these charges will be forwarded to you in the near future.

And it is signed: Fraternally yours, James R. Hoffa, General President.

* * * * *

MR. WILLIAMS: Offered, your Honor, yesterday as Exhibit Number 12 was this letter dated September 2 to Mr. Samuel Feldman, care of Teamsters' Local 929, 4345 Frankford Avenue, Philadelphia 24, Pennsylvania:

Dear Sir and Brother: Enclosed herewith is a copy of the charges which I am preferring against you.

And attached thereto were these charges, which were preferred on September 2 against Feldman:

At the insistence of the Board of Monitors, I hereby file charges against Samuel Feldman, Business Agent of Local 929, Philadelphia, under the provisions of Article 18, Section 6, paragraph 10 and 6, paragraph 12, in that Feldman, while a Business Agent of Local 929, according to the testimony before the Senate Select Committee, offered to settle a labor dispute between Horne and Hardock and various Labor Unions in the Philadelphia area for payment of the sum of fifty thousand dollars. And that said Feldman has been convicted six times upon charges alleging conspiracy, possession of burglary tools, attempted grand larceny, burglary, shop-lifting and robbery.

Signed by the President, and submitted, as I say on September 2, 1958.

Q (By Mr. Williams) Now, was a panel selected by the President to try Feldman?

A Yes, sir.

Q Who was on that panel?

A The panel consisted of Vice President John O'Rourke, International Organizer Nicholas P. Morrissey, and one, Armond Carlo Magno of Pittsburgh.

Q When was that panel selected?

A The panel was appointed on October 10th, of this year.

Q And has a hearing been held on these charges?

A Hearing was begun on October 28th, and adjourned at the request of both the accused and the panel, because certain Constitutional problems had been raised by Feldman. They really -- it seems to me they posed no problem, and they will be answered in the very near future and the hearing resumed.

* * * * *

Q Before going into that, have Bolling and Smith been suspended?

A They have been suspended.

Q Have charges been preferred against them?

A Charges have been preferred.

Q Has there been a hearing?

A There was a hearing.

Q Was a suit filed against the International to enjoin it from conducting this hearing?

A Yes, sir.

Q Did International counsel appear in Tennessee and resist the injunction?

A Yes, sir.

Q Was the International successful in resisting the injunction?

A It was.

Q Now, will you produce the letter of suspension that went out from the International to Smith and Bolling.

A Letter of suspension -- here.

MR. WILLIAMS: This is 44, I believe.

THE DEPUTY CLERK: Defendant's Exhibit Number 44.

MR. WILLIAMS: I offer, your Honor, these letters of suspension that went out to Messrs. Smith and Bolling. I believe they are identical, and if the witness reads one, it will cover both.

THE DEPUTY CLERK: Defendant's Exhibit Number 45.

THE WITNESS: There are two letters, sir, the body of them identical. They are both dated August 28, 1958, and both signed by General President Hoffa, and they were sent to Mr. H. L. Bolling, Secretary-Treasurer of Teamsters' Local 515 in Chattanooga, and to Mr. Glenn W. Smith, President of Teamsters' Local 515. The body of both letters reads:

Dear Sir and Brother: At the request of the Board of Monitors, and in view of your admission that you used twenty thousand dollars of the Union's money in an attempt to bribe a local judge in a criminal case, I am forthwith suspending you from the office of Secretary-Treasurer until a determination is made on the charges that will be preferred against you in the very near future. A copy of these charges will be mailed to you as soon as they are available.

The body of the other letter is the same, except that it said President instead of Secretary-Treasurer.

* * * * *

A We secured a delay from the Board of Monitors over the weekend, because there was no need to act on Friday. The trial at the local level was scheduled for Monday evening, and on Monday, the General President, by telephone, assumed jurisdiction of the charges against Smith and Bolling at the local level; and the jurisdiction of the local ceased at that time.

Q And it was on the original jurisdiction assumed by the President that these charges were based which were subsequently filed, is that correct?

A Yes, sir. The charges at the local level had accused Smith and Bolling only of violations of certain sections of the Constitution.

* * * * *

THE WITNESS: They are both from General President James R. Hoffa, one to Mr. H. L. Bolling, Secretary-Treasurer of Teamsters' Local 515, and the other to Mr. Glenn W. Smith, President of Teamsters' Local 515.

Dear Sir and Brother: Pursuant to the authority vested in me by the International Constitution, I have assumed emergency jurisdiction over the disposition of charges filed against you by Brother Ralph Eagle of Number 515, and, in addition, I have suspended you from the office of Secretary-Treasurer of the Local Union.

These charges allege violations of Article 18, Section 6, by one gross disloyalty or conduct unbecoming a member, in that you participated in the use of funds of Local Union 515 to fix a criminal case involving officers and members of the Teamsters' Local Union by bribing a state judge in violation of Article 18, Section 8, subsection 4.

Two. Activities which tend to bring the Local Union and the International Union into disrepute in that you participated in the use of funds of Local Union Number 515 to fix a criminal case involving officers and members of the Tennessee Local Union by bribing a state judge in violation of Article 18, Section 6, subsection 10.

I believe where I said section 8 earliers, it should be Section 6.

Pursuant to the authority vested in me by the International Constitution, I hereby schedule a hearing on these charges, to be held at ten a.m., on Tuesday, October 28th, 1958, at the Reid House, Chattanooga, Tennessee.

This is your official notice of that hearing, and you are invited to be present and make such defense as you deem appropriate.

I have appointed a panel who shall conduct this hearing, and make a report to me, concerning findings of fact and their recommendation. On the basis of that report, I will make a decision in this matter, which will be promptly communicated to you.

And it is signed: Fraternally yours, James R.Hoffa.

* * * * *

Q (By Mr. Williams) Now, the hearing was actually held on the 28th day of October, is that correct?

A That's correct, sir.

Q Has any opinion yet been rendered?

A No. No opinion.

Q Or filed?

A No opinion or recommendation has been filed by the panel.

* * * * *

Q And in Order 16, which relates to Owen Brennan, in a letter to the Board of Monitors, he has expressed his willingness to file charges forthwith?

A That's correct.

TRANSCRIPT OF PROCEEDINGS

Nov. 10, 1958

Testimony of - Raymond Bergan

After the Board of Monitors had reviewed the cases that were ready for decision and returned and made their recommendations to the General Executive Board, the General Executive Board went into session without the Board of Monitors and proceeded to determine those nine or ten cases that were ready for decision. By that time it was six or perhaps seven o'clock in the evening. Shortly after that the panel recommendation on the Joint Council 13 election appeal was prepared and was submitted to the General Executive Board for decision.

It was the feeling, as I discovered, of the executive personnel of the International at that time that the Joint Council 13 election appeal was not a matter for consultation with the Board of Monitors, because the contestants on the appeal had agreed previously to be bound by whatever the General Executive Board said. Consequently -- Yes, the General Executive Board. Consequently, the General Exeuctive Board went ahead and decided the Joint Council 13 appeal.

Now, either late in the evening or early the next morning, when everyone could sit back and take a somewhat more detached view of the situation, it was realized that this was a case which had not been brought to the attention of the Board of Monitors and it was very early the next morning that Mr. Previtant, International attorney, went over to see Mr. O'Donoghue and called that to his attention.

- - - - - - - - - -

On the 11th of September Mr. Bartosic and I and Mr. McCarthy met with reference to setting out certain orders of recommendation to appear in the October issue of the magazine. I met with Mr. Bartosic for about a half hour, I guess, and then Mr. McCarthy came in. Mr. McCarthy met with Mr. Bartosic. As a result of that Mr. McCarthy offered his opinion that from a technical point of view it might be preferable to print a summary of the orders of recommendation rather than print the entire documents. Mr. Bartosic brought this message back to the Board of Monitors and the next day or perhaps that afternoon we learned that the board wanted the entire copy of their recommendations printed in the magazine. So I asked Mr. McCarthy to set the material up in type to see how many pages it would actually run and he did so and advised me that it would run in the neighborhood of six pages to print. I believe, at that time, there were five or perhaps six orders of recommendation that were to be printed. He had it set up in type or blocked out in whatever technical manner they do and advised me that it would run about six pages to print that in the magazine. The magazine normally runs either 32 or 40 pages.

By the time the October issue was disseminated the amended petition of the Board of Monitors had been filed raising questions as to the validity of the whole monitor setup; it that correct?

Yes, sir, it had.

Now, when was that second amended petition filed, do you recall, Mr. Bergan?

MR. DONOGHUE: September 30.

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Now, Mr. Bergan, was this recommendation, which was No. 20, related back to Order 5 which had recommended that the removal of locals from trusteeship be stayed until rules were promulgated for the conduct of trusteed local elections?

I always assumed that the two were related, yes, sir.

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Such checks should be required only of those who indicate willingness to be nominated.

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When was the next order of recommendation that came from the board?

Order of Recommendation No. 21.

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The substance of the recommendation was that the merger of the two locals which had taken place in early January of 1958 be set aside, that the local unions be re-established as separate entities, that a temporary trustee be appointed over the two local unions, and that Mr. Jessie Carr or Mr. Bob Dixon, who had been associated with the local unions, both prior to and subsequent to the merger, not be named the trustee, that a Price-Waterhouse survey or audit of the books be made, and that by January of 1959, by January 1st of 1959, that two local unions -- I am sorry, that Local 183 --

MR. O'DONOGHUE: You made a statement. We had said nothing to do with 959.

I am sorry. That Local 183 be restored to self-government, by -- following removal by trusteeship.

Would you tell the Court what the situation was in Alaska as you determined it after the recommendation came.

MR. O'DONOGUE: May it please the Court, do you think that is essential for this witness to be testifying as to what the conditions were in Alaska, after the order issued, when we have about seven witnesses here who can tell of personal knowledge and not on hearsay?

MR. WILLIAMS: I want to show what effort the International made, it went to, in order to explore fully the factual presentation that was made by the board and what motivated it, precisely what it has done with respect to this particular recommendation.

This is one, your Honor, wherein a recommendation has come from the board which we feel would be wrong for the International to do what they have asked. And I think we ought to show why we feel it would be wrong. This is the only one wherein we have made a challenge with respect to the reasonableness of it and have refused to do anything with respect to it. There have been others that we have challenged but have acted upon.

THE COURT: Gentlemen, the Court thinks that Mr. Bergan as a witness should only testify to matters of which he has personal knowledge or with respect to matter which are of record in the general office.

(By Mr. Williams) Mr. Bergan, was petition sent to the International from members of Local 183 with respect to this recommendation?

Yes, sir.

And what was the sense of the petition that was filed and signed by the members up there?

MR. O'DONOGHUE: I will stipulate that you can introduce that into evidence. The International sent us copies of the petition signed by individual members. I believe some two or three hundred of them, Ray, individual names.

THE WITNESS: I haven't counted them. I think they are in the neighborhood of about 400.

MR. O'DONOGHUE: In which they were in favor of a merger.

(By Mr. Williams) Would you tell his Honor where Local 813 is.

Well, Local 183 was in Fairbanks, Alaska

And where is Local 959 located?

Local 959 is located in Anchorage, Alaska.

Geographically, how far removed is Fairbanks from Anchorage, to the best of your estimate?

About 400 miles.

Fairbanks being north?

Fairbanks is about 400 miles.

What was the membership of 183 in size?

The membership of 183 fluctuated during the summer or the winter months. It averaged in the neighborhood of 570 or 580 perhaps.

What was the membership of 959 before the merger?

The membership of 959 ran anywhere from 900 to 1200.

Where did 959 prior to the merger have offices?

959 had one office in -- I am sorry, in Anchorage, its main office. And another office in Southeast Alaska.

Ketchikan?

Ketchikan, I believe. I am not certain.

And also in Juneau?

I don't Know whether it had one there prior to the merger. I don't believe it did.

How many teamster locals were there before this merger in the whole Territory of Alaska?

There were three.

Where was the third one?

The third one was and is on Kodiak.

How big is that one?

That one is Local 500 and it has less than a hundred members at the present time.

So that in the whole then Territory of Alaska there was something less than 2,000 members of the International Brotherhood of Teamsters; is that correct?

Yes, that would be correct.

Would you tell the Court what the nature of their work was? Were they over-the-road drivers, or what were they?

MR. O'DONOGHUE: May it please the Court, I am going to object to that. We have the witnesses here. We have the officers and four witnesses who can tell us.

THE COURT: Sustained.

(By Mr. Williams) At the present time, 183 is in fact merged into 959, is that correct?

Yes, sir; that is correct.

So that at the moment there is no 183?

That is correct.

Now, with respect, Mr. Bergan, to the second amendment to the Monitor's petition, which deals with the eligibility question, eligibility for office of the membership, was the constitution changed in 1957 with respect to the provisions on good standing?

Yes.

MR. WILLIAMS: I don't think the two constitutions have been offered and I think it is appropriate to have them in the record at this time.

MR. O'DONOGHUE: No objection.

MR. WILLIAMS: Would you mark this Defendant's Exhibit 56?

THE CLERK: Defendant's Exhibit No. 56.

MR. WILLIAMS: This being the 1952 Constitution. And would you mark the 1957.

THE CLERK: Defendant's Exhibit 57.

MR. WILLIAMS: I offer them at this time.

MR. O'DONOGHUE: No objection.

THE COURT: Defendant's Exhibits 56 and 57 are received.

(Defendant's Exhibit 56, 1952 Constitution, and Defendant's Exhibit No. 57, the 1957 Constitution, were received in evidence.)

(By Mr. Williams) Would you tell his Honor in capsule form the difference with respect to good standing in provisions of the 52 and'57 constitution.

May I have the books, please?

(Books were handed to the witness.)

In essence, sir, the constitution, both constitutions, both the '52 and the '57 constitutions, provide, in Article II, Section 4, that in order to be eligible for election you must have been in what they call continuous good standing for a period of two years and you must have worked at the craft for that period. Both constitutions have that provision. Now, where the change was made was in Article X, Section 5 (c). The 1952 constitution provided that all members paying dues to local unions must pay them on or before the first business day of the current month in advance. Any member failing to pay his dues at such time shall not be in good standing. Now, that was the 1952 constitution.

The 1957 constitution, in Article X, Section 5(c), added two sentences to that provision and it read:

> "All members paying dues to local unions must pay them on or before the first business day of the current months, in advance"

And then it added: "Where membership dues are being checked off by the employer pursuant to properly executed checkoff authorization, it shall be the obligation of the member to make one payment of one month's dues in advance in order to insure his good standing. Thereafter, he shall remain in good standing for each consecutive month for which the check-off is made."

Then it continues that any member failing to pay his dues at such time shall not be in good standing.

Now, do you know, Mr. Bergan, what interpretation had been placed on the '52 constitution by the former president of the I.B.T., Mr. Beck, with respect to checkoff?

The interpretation given to the 1952 constitution was a very stringent one with respect to check-off. It was consistently the interpretation of the International Union whenever the question was precisely and specifically presented that a member who was under a check-off system, his dues had to arrive at the union office on or before the first business day of the month. It wasn't sufficient that they be checked off by his employer prior at that time. That it was the consistent interpretation of the International under the '52 constitution that the membership dues, notwithstanding that they were under the check-off system, must be received in the union office by the first business day of the current month.

Now in 1958, during the release of trusteed locals, what interpretation did President Hoffa place on that section? Was it the same as Beck's or different?

It differed from that made by President Beck during his administration.

Would you tell the Court how it differs.

It differed in that for members of the union who are under a check-off arrangement, it was considered sufficient for them to maintain their good standing if their dues were check off properly, even though they were a few days late arriving at the business office of the local union. This was an interpretation given by the General President in order to make eligible a greater number of people in trusteed local unions in order to facilitate the release of trusteed locals to autonomy.

MR. O'DONOGHUE: May I inquire if that is in writing? We would like to see it, please. President Hoffa's interpretation as you just gave, I am sure it is in writing. We would like to see it.

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MR. O'DONOGHUE: That is your interpretation, which we agree with. I am asking for President Hoffa's.

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THE WITNESS: I think that is probably it. (Handing document to Mr. Williams.)

THE CLERK: Defendant's No. 58.

(By Mr. Williams) I hand you Defendant's No. 58 for identification and ask you if that is a letter written by Mr. Hoffa interpretating the pertinent section with respect to a trusteed local.

Yes, sir.

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MR. WILLIAMS: I will just read the substance of it to your Honor. It is a letter dated March 6, 1958, and it is sent to the President of the Indiana Conference of Teamsters, Mr. Gene San Soucie.

Dear Sir and Brother:

> With further reference to our recent correspondence relating to the trusteeship of Local 279, Decatur, Illinois, this will be your authority to proceed with an election and restoration to local self-government of that local union.
>
> In conducting the monimations and election, you will apply the provisions of Article II, Section 4, and Article X, Section 5(c), to determine whether a member is in good standing. However, in the case of members under checkoff, you will rule those members eligible if they otherwise meet the qualifications, even though under such checkoff their dues arrived at union headquesters later than the first day of the current month.

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Now, I am going to ask the next question, Mr. Bergan, which I asked you previously when Mr. O'Donghue was looking at this document. Has that interpretation of the '52 constitution, good standing provision on checkoff members, been consistently given with respect to trusteed locals by the president of the International?

To my knowledge, it has.

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And that consitution went into effect on January 31, '58?

Yes, sir.

Now, do you know what date has been used by the International as the beginning date for the effectiveness of the new provision on checkoff dues?

The International has been using an April 1st date, which is the first day of the month following the publication in the March issue of the Teamster magazine.

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(By Mr. Williams) Do you know, Mr. Bergan, whether or not there has been any arrangement for a convention or call for a convention?

I know there have been certain arrangements made insofar as time and place and procedure. But I do not believe the call has gone out yet.

Do you know what the time and place is?

It is between the 15th and the 20th of March in Chicago. Those aren't precise dates but it's in that area.

THE COURT: When was that fixed?

THE WITNESS: I am not sure, your Honor. I would say within the last month. I can't pinpoint it any more precisely than that, though.

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CROSS-EXAMINATION BY MR.O'DONOGHUE:

I notice in your testimony you stated that you did not interpret the constitution of the International Brotherhood of Teamsters where there could be a stay of the expulsion order pending the appeal, isn't that correct?

Yes, sir, that is essentially correct. I said that the constitution, as I read it, required the penalty to go into effect pending appeal.

And as chairman of the Board of Monitors in discussing that with you, I stated to you that I thought that there was power in the General President to issue a stay of the order of execution with regard to the expulsion of these five men, didn't I?

Yes, sir.

And you and Mr. Williams ultimately agreed with that, didn't you?

We agreed with that, yes sir.

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Now, there is a policy in the International where an officer would be convicted of a crime that that section will not be enforced until he exhausts his appeal in court; that is correct, isn't it?

That is my understanding.

And I argued with you that I thought that it was only right and proper also that the members have the right of stay on their expulsion orders, didn't I?

Yes, sir.

And did it turn out in the after-events that these five men were not rightfully expelled?

It did indeed, yes, sir.

Let us go to this 107's case. With respect to 107, do you recall the day when you and Mr. Williams and my good friend Mr. Chaffetz, appeared before the Board of Monitors? You recall that?

Yes, sir; very well.

And we reviewed all the facts of 107, didn't we?

We did.

The Board of Monitors, the majority of us, at least Mr. Schmidt, myself, were in favor of an immediate trustee being appointed under the emergency powers, weren't we?

I think that was your original position, yes, sir.

And I think we discussed it, oh, for about two hours, from the ten o'clock until we adjourned for lunch?

We discussed it for quite some time.

And at any rate, Mr. Williams, in his very capable way, argued that at least we should issue a notice of hearing or file charges and have a hearing on the question as to whether a trustee should be appointed?

That is correct.

In discussing that question with Mr. Williams I suggested that there be a public member placed upon the panel that would hear the charges. Right?

Right.

And didn't we also discuss the constitutionality or legality of appointing a third outside member?

I believe we did.

That section of the constitution says that the panel shall consist of at least one -- let me read it. I think it is Article V, Section 10. It is Article XI, Section 5(a). I think the section said, and the words dealing with the appointment of this outside member, the sentence reads as follows:

> "In the case of all hearings conducted pursuant to or after the establishment of a trustee the General President shall designate a panel comprised of at least one International Vice President and one disinterested member of the International Brotherhood of Teamsters from the area involved."

We discussed that, didn't we?

Yes, sir.

And it was agreed that there could be legally and constitutionally a public member appointed, by you, Mr. Williams and Mr. Chaffetz, and the Board of Monitors?

I don't recall whether we agreed to that or not, Mr. O'Donoghue. I know we certainly agreed thatit would be a desirable practice, if such were possible. I don't recall whether -- We agreed to do it. I don't recall we agreed it was consitutional.

You wouldn't agree to do it if you didn't think it was legal, would you?

We agreed to do the restoration in Alaska because we felt that the possibility of a reprisal existed and that the reprisal section of the consent order may have taken precedence over the part of the constitution which required a penalty to go into effect immediately. To that extent we agreed to something that was unconstitutional. I think our problem with regard to this section on 107 was, as Mr. Wells was pointing out, that this was something that as far as he knew, and he had more experience with the Teamsters Union than either Mr. Williams or myself, that as far as he knew this was a practice which had never taken place in the past. We untimately agreed to do it.

It was agreed that this was the first time it had ever been suggested?

You are right. We did agree that you could read this section of the constitution in such a way as to make that permissible. That is correct.

And it was understood, Mr. Bergan, that Mr. Williams would so recommend this to General President Hoffa?

I think so, yes, sir.

And we came to that understanding and agreement. That is, the majority of the Board of Monitors and Mr. Williams came to that understanding and agreement, isn't that correct?

I think that is right, yes sir.

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And it was agreed that the Board of Monitors would get Price-Waterhouse to go in and get the Senate records and make a report back?

Right.

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Without going into that question -- we will come to that later -- I am asking you if it was not agreed between the Board of Monitors, the general counsel and yourself, that there would be charges filed against this local based upon the matter and material that was in the Senate Committee's report to us, plus Price-Waterhouse's report also after going into the record?

I don't recall, but I think it probably was. I won't dispute you, if you say it was. I think it probably was.

The first sentence of Recommendation No. 4 says that charges would be preferred against Local 107 to take it under trusteeship and that the trustee proceedings would be instituted pursuant to Section 5 of the International's constitution and a hearing would be conducted on the charges to ascertain whether or not trusteeship should be imposed. Right?

Right, sir.

That is our order that we sent out, Recommendation No. 4?

Right.

Your office received it, didn't you?

Yes, sir.

You received it?

Yes, sir.

Did you ever repudiate and say there was no such agreement as that?

I don't believe so, no sir.

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Did you read the memoranda that I sent over to your office under date of July 9th?

Yes, sir.

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There are also cases that dealt too, did it not, with the appointment of a trustee?

I think probably so. I don't recall.

When you appoint, as a lawyer, when you appoint a trustee of a local union, there is a suspension of the autonomy of that local union, isn't that correct?

Yes, indeed.

And there must be due process?

Yes.

And that means notice of charges and a hearing?

Well --

I won't press that any further.

I am just not equipped to discuss that matter with you, sir.

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Do you remember in the discussion that we had that particular morning before the Board of Monitors we raised this question about the Fifth Amendment --

Yes, sir.

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Right. Remember we discussed the law of trustees, that the first duty of a trustee is his duty to account and he should answer questions put to him when he is asked what happened to certain union funds, didn't we?

Yes, sir; we did indeed.

And that I also raised the question that I thought it was the duty of these union officers to answer the questions as to what happened to these checks which had been alleged to be forged; isn't that right?

That is right.

Now, didn't I also say that they may get away with the Fifth Amendment before the Senate Committee but they wouldn't get away with the Fifth Amendment when they came before a panel that was set up to inquire into this by the International, didn't I?

You did.

Now, you have read Price-Waterhouse report, haven't you?

Yes, sir, I have.

In the first three or four pages of that report they go into this very distinction and also quote how Mr. Carroll, the attorney for the local, said that these men if they were put before a panel of the union possibly would not invoke the Fifth Amendment; isn't that correct?

I recall that.

Now, and Price-Waterhouse, I think, stated that this report should be read in line with that distinction, that when this evidence went before a panel where a member would be compelled to answer the questions and could invoke the Fifth, that you must evaluate this report in line with that; isn't that right?

That is in there.

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With respect to the first one on page 5, it stated that there were 23 checks totaling some $4,986,27 which were forgeries. The checks were made payable to Mr. Grace. And an F.B.I. agent testified that these were forgeries. Mr. Grace was called to the stand and he invoked the Fifth Amendment. Don't you think that that should be a subject of a charge to put under trusteeship to find out if those forgeries, if the money was actually used for that purpose since there was forgeries?

Could be.

Now, there is also another report on page number 6. There was some 9 checks paid to Ben Lapensohn, and when Mr. Hartsough was called to the phone and it was marked for personal services they asked Mr. Hartsough to explain, for which purposes of the union these checks were paid. And Hartsough invoked the Fifth Amendment. Don't you think that that should also be the basis of a charge?

Could well be.

To put in trusteeship?

It could well be a basis.

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Didn't the evidence also reveal Food Fair gave the opportunity to Mr. Lapensohn to purchase 500 shares of Dan River Mills at 10,000 when in truth and fact it had a value of 15,000?

I don't recall the figures but there was testimony in that line; yes.

Didn't Food Fair also give to Cohen and to Lapenshon the right to purchase a thousand shares of Food Fair at a dollar a share when it was on the market at $4.00?

I think there was probably testimony to that effect. I am not familiar at this time with the McClellan Committee testimony. But I do recall that area.

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Wasn't there testimony in the record before the Senate Select Committee that Food Fair had been given certain benefits by being permitted to drop unlimited number of drops - - of over even 200 a week, when the A & P and American Stores and the other food stores didn't have it?

There was testimony to that effect. There was also testimony, as I recall, to indicate that that had been a practice of some time; and was part of a contract and might not have been the underhanded or sinister practice that it purported to be. There was testimony on both sides. That is all I was trying to say.

Don't you think that matter was a subject of charges?

It was certainly the subject of investigation.

Wasn't it also the subject of charges to be put against that local, to have these officers explain that?

It could have been.

Don't you think in your judgment as a lawyer that it should have been?

The Food Fair matter, I am not sure of, sir. The other matters - - The Food Fair matters, I am not sure.

Let's go through these other forgeries. There was also evidence up at the Senate Select Committee which Price-Waterhouse reports which was not put in evidence which showed that one Jerome Friedman, a broker, had 16 checks made payable to him by Local 107 in the sum of $10,000. These were all forgeries, the files of the Senate Select Committee show. Friedman said he never got the money and there are statements to that effect. Don't you think that should have been the basis of a charge to put this local union on notice for trusteeship?

It could well have been.

Don't you think it should have been, Mr. Bergan?

Mr. O'Donoghue, I am not going to quibble with you about this. Certainly there is a lot in the Price-Waterhouse report that indicates that things were not what they should have been at Local 107. What I meant to indicate last week was that the Senate -- I don't mean to indicate that the Price-Waterhouse report is a whitewash of 107. It is not. What I did mean to indicate was that the testimony before the McClellan Committee and the Price-Waterhouse report when set side by side on the particular areas which they cover, that the testimony before the McClellan Committee, it seemed to me, fell far short of what the actual findings by Price-Waterhouse.

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However, there were other matters that Price-Waterhouse found, acts that were wrong and improper and illegal, isn't that correct?

That's correct.

Now, I just want to go over those with you. More particularly, I'll just state what these foregeries were, at present. Do you recall there was a check made payable to Dave Kanner of March 16, 1956, in the sum of one thousand dollars, and it was testified by an F.B.I. agent thatit was a forgery; further, the evidence will show that this check was cashed in the Local Union's office; the check was signed by Mr. Grace and Mr. Cohen; it was a forgery and it was cashed by the Local Union's office. That's a serious thing, is it not?

I think so.

It's also a dishonest act, wouldn't you say?

On somebody's part.

And it is also mismanagement by union officials in doing things like that?

It would seem to be.

Isn't that --

Mr. O'Donoghue, I don't mean to interrupt, but this isn't the place to try the 107 problem. It seems to me --

MR. WILLIAMS: When we get the books back, we are ready to go on 107, if that's the thrust of the question.

MR. O'DONOGHUE: We have agreed, Mr. Williams, when we get the books back from the Senate Committee, you will file charges and have a hearing. We agreed to that.

MR. WILLIAMS: You asked me today in open Court if we would when we got the records back, and I said so -- it's in the record.

MR. O'DONOGHUE: Fine. Fine.

THE WITNESS: I understand that to be the basis of the objection of the officials of 107, one of the two major objections.

Well, just this question to you, Mr. Bergan: You notice it is in the minutes of the Board of Monitors, I think they are dated July 21st, 1958, in which it is said that the Chairman would use his good offices to get the books and records from the Senate Select Committee?

I recall that; yes, sir.

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When you wrote that letter, as you said, you prepared, or Mr. Conway, on September 9th, and you sent it to them -- that Mr. Hoffa signed -- telling them that there was going to be an investigation or a hearing in Philadelphia, did you know at that time that there wouldn't be any hearing since 107 would object, because they didn't have the books and records?

I'm sorry, I lost you there.

When you wrote that letter for Mr. Hoffa to sign --

Yes.

On September 9, did you know at that time that 107 would object to the hearing because they didn't have the books and records?

No, sir; I did not.

Why didn't you call me and tell me as Chairman of the Board of Monitors that you were sending this panel out to conduct such a hearing without filing charges?

Oh, I can't tell you why we didn't. I don't know. This was a very hurried period, as you recall. It was the end of the Senate Select Committee's processing of the charges against the Teamsters. Frankly, I can't tell you why we did, or why we didn't.

All right. We'll go to this next case, now, that you have testified --

I think -- I'm sorry -- I didn't mean to interrupt -- I think that I would be the first one to admit that I have made a very, very bad mistake, if the thrust of the objection, of 107, was as to the propriety of this type of hearing panel, and I'll still agree that perhaps it might have been a somewhat inartistic way to do it.

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Now, let's go on -- you know I testified with regard to this question of a surety bond of Mr. Cohen, and in my direct testimony I think I said that Mr. Cohen didn't have a fidelity bond for some six or seven months?

I think that's correct.

That's a true estimate?

I think so; yes, sir. His bond was cancelled shortly after his appearance before the Senate Select Committee. I can't give you the date, but it was the end, I'd say, of last year sometime.

I think you are in error, Mr. Bergan. I think our Order Number Ten will show that the American Surety Company cancelled his bond on October 25, 1957, effective thirty-five dats after receipt. So, from approximately November the 7th, 1957 --

Excuse me -- December 7th.

December 7th?

The end of last year.

Yes. Last year -- Mr. Cohen didn't have a fidelity bond, and he didn't testify until April of 1958?

You are right. I'm sorry.

And his bond wasn't put up until after we completed our order that it be put up?

That's correct.

Just as an aside, don't you think that the mere fact that this officer, Secretary-Treasurer of a 15,000 member Local, didn't have a bond, was also evidence of such negligence under Article 6, Section 5, that it would be the basis also for a charge of trusteeship?

Not necessarily; no, I don't think so.

You will agree me?

I agree that he should have been bonded in an interval -- certainly --

And even if he didn't have it at that time, it is even ground for expulsion from membership under the Constitution, Article 10, Section 11, isn't it?

Article 8, isn't it? I guess you're right; it's Article 10. (consulting papers.) It is certainly grounds for revocation of charter; I'm not sure what ground it is against an individual.

Mr. Cohen, by the way, became an International trustee, effective January 31, 1958, didn't he?

That's correct.

Now, there's one other thing in this Order of Recommendation Number four --

Pardon me a moment --

Yes.

Go back on that surety bond coverage. I don't see anything in Article 10, Section 8, which makes that grounds for revocation of membership. It is certainly grounds for revocation of charter.

It is ground for revocation of the charter for failure to comply?

Right.

Therefore, wouldn't it be proper to use it as a basis for their putting it under trusteeship?

Well, not if you could simplify the problem by getting him a bond, which we did when it was brought to our attention.

Did you, as Associate General Counsel of this International, go to the American Surety Company, and find out why they had to cancel Cohen's bond?

I never did, no.

Did you think it was necessary?

No.

Didn't you think it necessary to have found that out -- why they cancelled his bond?

I think the important thing, in the circumstances, is to get him bonded. I think --

Let me put this question to you --

Surely.

When he did get bonded -- sometime in 1958 --

June 27th.

June 27th. Didn't he pay three times the normal average premium?

I don't know. Mr. Mullenholz, I'm sure, could tell you that, because he, I think, arranged his bond.

I understand that the International has taken one blanket bond that covers every officer throughout the International jurisdiction, is that right?

That's correct.

Did you check to see whether or not the General Insurance Company of St. Louis, which is the bonding company, is licensed to operate in every state in the union? Plus Hawaii and Alaska.

I didn't check, no, sir.

Well, will you please take the Constitution, Article 10. Said section reads as follows: Section 8(a):

> Said bond must be procured from a recognized bonding company, authorized to do business in the state where the Local Union is situated, a copy of which should be kept on file at the general office.

Do you know whether they were able to do business in every state?

I don't know personally. I think the proper

Is it the intent --

I would say, parenthetically, if I might; Now, that you point this out to us, if we have not checked it, we will, which is illustrative of how we can get along if we can sit down and talk things over.

Well, before you took the bond out, you never told us that you were going to take this bond out with the General Insurance of St. Louis, did you?

I never did, no.

MR. O'DONOGHUE: It's a great deal of our business.

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Article 10, Section 8 (a), isn't it the intent and meaning of that section, that individual bonds should be secured by each officer, in order that there would be financial integrity of that officer, so that he could get a bond, wasn't it --

Oh, I don't think so --

Didn't the Constitution provide that each officer should get a bond?

It does. I think it uses that language. We considered that difficulty. Mr. Mullenholz raised the problem with me specifically before we went into the blanket bond coverage. As I read this section, the purport of this section is that an officer be bonded as a protection against loss, not necessarily a protection or a certification of the type of character of the person who is covered. And I think the important thing is that these individuals be covered by some kind of a bond, as they are in this case, to a higher extent than in all likelihood most of them have been covered before.

Now, just one thing more on Order Number Four, and I'll leave it, and we'll go to more fertile fields. You will notice this: That we requested in here that the International Union should immediately notify the bonding company that has now current and in operation a fidelity bond covering the officer or officers of Local 107, in view of the disclosure made by the Senate Committee -- this was sent out, I believe, June 13, right?

Yes, sir.

When and at what time and what day, did 107 notify the bonding company?

If you'll give me a moment, I'll check that.

Well, it was around August 17th wasn't it?

I think it was sometime in August, yes.

About two months after the order was issued?

I can get you the precise date if you want to wait a moment.

Do you have the letter where they notified the bonding company?

No, I haven't; I have a telegram from President Hoffa to 107, instructing them to notify the bonding company.

Do you know whether they ever did?

I don't.

Huh?

I don't know whether they did.

Do you know if they filed a proof of loss?

I don't know whether they took any further steps.

Okay.

I know that you agreed at one point that that provision of the order would be satisfactorily met if the Local Union would take those steps.

All right. It would be --

I can't tell you of my own knowledge whether they did or did not after receipt of that telegram.

Did you take any steps to find out?

I did not.

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(By Mr. O'Donoghue) Mr. Bergan, with respect to Local 245, in your answer, in this particular case on page nine of the answer, Order of Recommendation Number 11, it reads as follows:

Thereupon, apparently the telegram attached as Exhibit 11 to the Monitors' Petition was received from the Acting Secretary of Local 245. That's the telegram in which he said --

Telegram to you?

We aren't going to let you have an audit until one of us meet with you -- yes. Then you say: This is a matter that has not heretofore been brought to the attention of the International Union or its counsel, but one which would appear to be readily resolved.

I was --

Go ahead.

That sentence is in error as I discovered the end of last week. A duplicate telegram was apparently sent to the International that we had no knowledge of until sometime last week when we went through the file.

Until after you filed the answer. That would be Defendant's Exhibit 31 -- Round sent the same thing to Gibbons?

Right.

Mr. Gibbons didn't call you and tell you that he received this telegram?

Nobody called me with regard to that.

I'm referring to Defendant's Exhibit 31: He didn't call you after he received it?

If that's the telegram, no.

Yes. Now, did you know that he had written Defendant's Exhibit 32, a carbon copy of the letter dated September 11th?

I never saw that letter either until last week. I think it shows his heart's in the right place.

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(By Mr. O'Donoghue) You knew, Mr. Bergan, that we wanted Price-Waterhouse to go in there and make the audit on these books, the Board of Monitors, right?

I was aware of that.

Do you recall me telling you that, from the report they filed, of about $95,000.00 income, that over half of it, over $50,000.00 of it, went in salaries and expenses?

I recall that; yes, sir.

And I also -- strike that. The Board of Monitors also wanted this examination of these books and records to also set up eligibility lists prior to an election at that time, right?

We understood that that was one of the purposes.

At the same time, while that was going on, we also had an order out to send Price-Waterhouse into Local 808 and Local 295, didn't we?

That's correct.

Now, Local 245 of Springfield is a trusteed local, is that correct?

Correct.

Under the direct supervision of Mr. Hoffa?

Correct.

With the Executive Assistant, Mr. Gibbons, as trustee, right?

Right.

295 in New York was likewise a trusteed Local under the direct supervision of Mr. Hoffa, correct?

Right.

McNamara was President of that Local, wasn't he?

He held an office; I'm not sure that it was President -- probably was.

He was President. 808 was a fully autonomous, independent Local, and we wanted an audit made of those books, didn't we?

You did.

Now, we issued an order for the audit of these books and records, isn't that correct?

Correct.

Now, the Constitution give ample power to the General President or the General Secretary-Treasurer to audit the books and records of a fully autonomous Local, right?

I think so.

In section -- Article 10 of Section 11, and sub-sections (a), (b), (c) and (d), there's no question about that, is there?

There's no question in my mind but what the President of Secretary-Treasurer can order the audit of any local Union at any time -- the books.

Either fully autonomous or trusteed?

I don't think it makes any difference.

Any differnet -- right. Now, you knew Price-Waterhouse sent a man from St. Louis, Missouri, into Springfield, Missouri, to Local 245 to make that audit after it had been agreed upon, isn't that correct?

I learned that, yes.

Price-Waterhouse had two men waiting for three or four days up in the City of New York to audit the books and records of 295 and Local 808?

Right.

And they were given evasive answers each time they tried to get in?

I heard that from Mr. Bartosic. I think, Mr. O'Donoghue, that those are three things the International had not done -- that we conceded that.

MR. WILLIAMS: In the interest of the accuracy of this record, Mr. Schmidt said the other day, your Honor, that he would get the books of 295 and 808 from the District Attorney for New York County where they are now quartered. And, as soon as he gets them, I don't see the problem; we agreed that we would take the necessary action when the books are available.

MR. O'DONOGHUE: Well, may the record be straightened up; The 808 records and books were always in their office, of 808. 295's were in District Attorney Hogan's office, but 808's were always in their particular office. And, to my knowledge -- are they in the District Attorney's office?

MR. SCHMIDT: They came into the District Attorney's afterward. In other words, this is the second time the 808 records are in the District Attorney's office -- right now.

MR. O'DONOGHUE: But, Mr. Williams --

MR. WILLIAMS: Did Price-Waterhouse go to Mr. Hogan?

MR. O'DONOGHUE: No, they did not, because they could not get those of 295. But let me say this:

Mr. Williams, I am happy to accept your agreement of you and General President Hoffa that we issue the order to audit the books of 180, 808 and 295, is that agreed?

MR. WILLIAMS: As soon as the books are returned, we will recommend that that be done. They can go to Mr. Hogan's --

MR. O'DONOGHUE: Well now --

MR. WILLIAMS: We have made that recommendation, Mr. O'Donoghue. We'll continue to make it, andurge that that be done.

MR. O'DONOGHUE: I think I'd like an Order from the Court that it be done -- your urgings and recommendations --

MR. WILLIAMS: Well, you just asked me if I would or could, and I answered your question, and you are inferring -

MR. O'DONOGHUE: I think you ought to be able to say it will be done.

(By Mr. O'Donoghue) Now, one other question, Mr. Bergan, with respect to Mr. McNamara being President of 295 and also Financial Secretary-Treasurer of Local 808, he's an officer in two Local Unions, isn't that correct?

That's correct.

Isn't there some question of unconstitutionality of a man being an office in two Locals?

I think there's a definite question of unconstitutionality in a man being an officer of two autonomous Unions. I'm just not so sure that the question just doesn't fit at all if one Local is under trusteeship.

You just didn't resolve it?

I don't know. You are calling for a legal opinion. One I am not able to give right now. I think there's a question, a definite question, if there are two autonomous Local Unions involved. As a matter of fact, I think you raised that point, Mr. O'Donoghue, about Mr. O'Rorke, and the General President asked him to step aside -- one of the officers in one of those Locals.

You know that Price-Waterhouse, in its report to the Board of Monitors, stated that in making this audit and study of the books and records, both of the International and the Locals, in their report stated that they wanted a draft a manual that would be used by the International for all Local Unions, and as a guide to auditors going over the books and records. You know that, don't you?

Yes, that was in one of their reports to you.

Which is filed with the Court?

I assume so; it's certainly a part of of the appendix to your initial report.

Now, in order to accomplish that section of the decree, dealing with the establishment of proper auditing procedures between the International and the Local, it will become necessary for Price-Waterhouse to get into certain Local Unions, will it not?

I don't think that's absolutely necessary.

Isn't it essential -- how could they prepare a manual if they can't get into the books of a Local Union?

I think it would certainly be desirable for them to get in.

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(By Mr. O'Donoghue) I want to go over this question of the call of the convention, the call of the special meeting of the General Executive Board, dated September 3rd, 1958: Do you recall that a telegram was sent to Martin F. O'Donoghue, Chairman of the Board of Monitors, dated September 3rd, 1958, wired at ten twelve a.m., do you recall that?

I don't know, but -- I don't recall it, but I assume it to be the case.

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MR. O'DONOGHUE: It's a telegram of September 3rd, 1958, from James R. Hoffa to Martin F. O'Donoghue; it has already been identified, and I offer it as Monitors' Exhibit Number 70.

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MR. O'DONOGHUE: I also offer my response, a telegram to General President Hoffa, dated September 3rd, 1958, as Monitors' Exhibit Number 71.

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MR. O'DONOGHUE: And a letter, subsequently written that date, from Martin F. O'Donoghue, Chairman, to James R. Hoffa, as Monitors' Exhibit Number 72 -- a letter dated September 3rd.

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It goes as follows:

"Martin O'Donoghue, Chairman: This will advise you that tonight at 8:00 P.M. the General Executive Board of our International Union will convene in our Headquarter Building.

James R. Hoffa, General President"

In response to that, I stated:

"Your telegram received at 11:50 AM advising that the General Executive Board of the International will convene in your Headquarters Building at 8:00 PM tonight arrives with too short a notice for the convening of the Board of Monitors to be present at the General Executive Board Meeting. Monitor Schmidt is leaving for San Francisco at 3:20 this afternoon and will be out of city for approximately a week or more. It is impossible to convene Board of Monitors to meet with General Executive Board. However the Board is sending Executive Assistant Florian J. Bartosic to be present at all sessions of the General Executive Board in keeping with the spirit and intent of the Court Order and to report to the Board of Monitors at its next meeting on September 15, 1958. We would also request a copy of the minutes of the meeting of the General Executive Board as we have in the past and which has not been complied with.

Martin F. O'Donoghue
Chairman, Board of Monitors."

That's Monitor's Exhibit Number 71.

Monitor's Exhibit Number 72 is a letter which I addressed later that evening. It is dated September 3rd, 1958, and was delivered by hand. It is addressed to James R. Hoffa, General President, International Brotherhood of Teamsters:

"Dear Mr. Hoffa: Late this afternoon, at approximately 5:00 P.M., I heard from a reliable source that the meeting of the General Executive Board tonight would consider and vote upon the holding of a convention sometime after February, 1959. I wired you earlier today that the Board of Monitors could not meet with the General Executive Board inasmuch as Mr. Schmidt was leaving for San Francisco at 3:20 PM, through prior commitments, to receive an honorary award.

"In the Monitors' Report to Judge Letts filed on or about August 3, 1958, at pages 40 to 42, inclusive, we advised the Court that we had heard unofficially that the General Executive Board proposed to call a convention in February of 1959 and the Report, among other things states:

> 'A majority of the Board of Monitors desire to state to the Court at this time that compliance with various provisions of the Consent Order dealing with the following subjects is a condition precedent to the holding of a convention; (1) the adoption and publication of model by-laws or provisions for insertion in Local union by-laws; (2) the establishment of a reporting control system between the International and the local unions in order that the standards for good-standing membership in the local unions and the International will be uniform; (3) recommendations of amendments to the International Constitution; and (4) the release of the trusteed locals . . .'
>
> "The Report further states:
>
> 'When the provisions of the Consent Order have been fully complied with, the Board of Monitors will promptly recommend to the Court and to the General Executive Board that a new convention be called.'

"I also would like to call your attention to the Price-Waterhouse report which, among other things, states that, until there was better reporting of the good-standing membership of each individual member in a local union and that report flowing from the local union to the International, the Board of Monitors could not carry out the duties assigned under the Court Order in passing upon the credentials of the various delegates to the convention or the number of delegates that each local union would be permitted to send. Finally, it should be noted that the International Union has failed to carry out the commitment, made by your General Counsel, to furnish the Monitors with a copy of the agenda of each Executive Board meeting.

"I am, therefore, requesting that the matter of the time for holding of the convention be only considered by the General Executive Board after consultation with the Board of Monitors. The Board of Monitors will be happy to meet with the General Executive Board to consider the time for the calling of a convention along with other matters based on prior Orders of Recommendation made to the International, under the terms of the Court Order, that are part and parcel of the calling, holding and conducting of a proper legal convention.

"Very truly yours, Martin F. O'Donoghue, Chairman."

THE COURT: Let me have that.

(The Exhibit was passed to the Court.)

(By Mr. O'Donoghue) Mr. Bergan, as an associate general counsel of the International, directing your attention to on or about September 3rd, had you heard anything from any official of the International, or any other source, that on this night of September 3rd, there was going to be discussion setting the time for the holding of the convention?

Mr. O'Donoghue, I can't answer that question. I just simply don't know. We have been talking so much about a convention since then, I am fuzzy in my mind as to when this started. I wouldn't want to say yes or no. I simply couldn't tell you.

Wasn't that the purpose for this special call? Wasn't that one of the purposes of this meeting of September 3rd, to set the time for the calling and holding of the convention?

I can't tell you -- I'd have to check the agenda for that.

Now, getting to this meeting of September 16th --

In any event, at your request, there was no discussion of it at that meeting.

There was another meeting on September 16th, 1958, of the General Executive Board, was there not?

That's correct.

You were there?

I was there.

You were present?

I was present.

You know the transcript of the testimony will show that General President Hoffa, the General President, attended that meeting, did he not?

Yes, uh-huh, yes, sir.

And the Board of Monitors were there, were they not?

They were there for a portion of the meeting; yes, sir.

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(By Mr. O'Donoghue) Mr. Hoffa didn't say to the Board of Monitors, "Look, gentlemen, we'd like to call a convention, and we'd like to cooperate with you people about holding a convention in March, did he?

I don't believe so. I don't recall.

You don't have any recollection that Mr. Hoffa said to the Monitor Board, "Look, we would like to hold a convention as soon after the first of the year as possible or during the month of March, and could that be done?" Was any such question like that ever put to the Monitors?

I don't think so, Mr. O'Donoghue. It's been awhile since I've read this tape. I don't recollect a question of that type.

I did make a statement, and told him certain things had to be done which are somewhat similar to what I stated to the Court, and that they would have to be cleared away before a Convention --

The last paragraph --

Here at the end of it, too. I also said, "You know, Mr. Hoffa, there are a series of charges against you that will also have to be disposed of before a convention --"

I don't recall that statement. I'm sure if you say so, it's in here.

Yes. At any rate, after we went out that night, you passed this resolution to call a convention?

The General Executive Board --- I didn't pass any resolution.

I don't mean anything personally against you.

I understand.

At any rate, after that was done, we filed a petition to the Court here to construe that section of the Order with respect to the power of the General Exeuctive Board to call a convention before the period of one year and without the approval of the Board of Monitors -- thatis what we are here for --

It was filed very shortly after this meeting. I believe that you told Mr. Hoffa that evening that you intended to file it either that next day or sometime in the week.

Right. Now, well that petition was pending, just two weeks Thursday night, and at a press release, it was released that the International had set a time for holding the convention in Chicago beginning on March 16th, or was it St. Particks' Day, the 17th?

I think you and I both commented that it would overrun St. Patricks' Day. I don't know the precise date -- that's about the time.

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THE COURT: Mr. O'Donoghue, you may proceed.

MR. O'DONOGHUE: Yes, your Honor.

May it please the Court, I just want to ask a question or two again, about this Local 107 case, about an exhibit that is in evidence concerning it.

THE COURT: Counsel may do so.

Mr. Bergan, you prepared with Mr. Joseph Kenoway the letter of September 8, 1958, addressed to Raymond Cohen, is that your testimony?

Yes, that's correct.

Prior to the draftsmanship of that letter, did you discuss this matter with Mr. Gibbons at all?

I don't think so.

Did you?

I don't think Mr. Gibbons was around.

Did you discuss it with Mr. Hoffa?

Yes.

And what was your discussion with Mr. Hoffa?

I don't know precisely. We, I think we probably discussed the contents of the Price-Waterhouse report, generally.

Did you discuss whether or not you could have filed charges as provided by Order of Recommendation Number Four?

I'm quite sure we did not discuss that, at

Pardon?

At that time — I'm sorry.

Did you discuss with Mr. Hoffa that this section had always been construed by the International, that they never filed charges, they just went in and conducted informally some sort of a hearing and took a local over?

No.

Did you discuss that?

No, sir.

Did you discuss with Mr. Hoffa the way the International had construed Section 5 (a) of Article 6?

No. You mean --

When you were discussing with Mr. Hoffa this question prior to the drafting of this letter which was to go out, did you tell Mr. Hoffa that you had an agreement with the Board of Monitors that charges were going to be filed?

I don't think so.

Did you tell Mr. Hoffa that the Order of Recommendation by the Board of Monitors provided for the filing of charges?

I don't believe so, no.

Did you tell Mr. Hoffa that the Board of Monitors had sent you a legal memorandum which, in effect, states that under decided case law that there must be a notice of charges and notice of hearing before a local union can be placed in trusteeship?

Again, I don't think so. I am relying on memory. I am not sure, but I don't think so.

Can you tell us what you did discuss with him other than the Price-Waterhouse report?

No, sir; I don't believe I can. I think, if my memory is correct, that Mr. Hoffa told me that the panel was scheduled to go to Philadelphia on the 11th, and that the people in Philadelphia had been apprised of a hearing on the 11th. And then--now, this is -- I'm just relying on memory, and we have talked about this case frequently in lots of contexts since then -- so I'm not absolutely sure of this -- then we looked through the files of the International, or had someone look through it, and realized that someone had slipped up somewhere, and there had been no prior notice to the people in Philadelphia.

When was that slip-up discovered?

That day.

What day was this?

I think it's the date of that letter -- September 8, I believe.

September 11, 1958?

I believe it's the 8th. That left us in a situation where we were sure to be enjoined if we went along that way, it seemed to me.

What do you mean you were "sure to be enjoined?"

By sending a trusteeship panel to Philadelphia.

Yes?

Without any warning at all. Without any hearing. You know, without the ten-day notice of time and place that is required by the Constitution. Rather than cancel the panel, that was going up there, I suggested this preliminary hearing, that stated -- the preliminary investigation of the panel -- it is stated in the letter; and I think that is probably the way that came about. I discussed at that time, rather than cancel the panel entirely, since the arrangements had been made and somebody had slipped up somewhere, I don't know where -- we were unable to find record of notices to the people in Philadelphia. So we sent them up there to this preliminary investigation. The idea being --

I'm sorry -- go ahead.

The idea being that perhaps we could straighten out some of these difficulties, some of these discrepancies between the two reports. I have always thought that as far as Philadelphia was concerned, that it would be to the benefit of all if we could simplify this situation. And by that I mean that if there are fifty things that are charged, that are sufficient to put the Local -- now, this is just a rough example -- if there are fifty things that are charged to enable the International to put this Local into trusteeship, and any one of them are sufficient, why go ahead on the fifty charges if you can do it on one -- that is the sort of thing I had in mind when that letter was written.

Don't you think, Mr. Bergan, you should have come to the Board of Monitors and discussed it before you sent this letter out?

Hindsight might have dictated that, Mr. O'Donoghue. We were --

Well, you admit then that you were wrong --

I admitted that this morning, sir. It's not the most artistically drafted letter in the world --

Let me ask you this -- something else: You said that you discussed with Mr. Hoffa, and he told you that the people in Philadelphia knew the panel were coming up on September the 11th, is that correct?

I can't recall precisely, but somebody at that meeting told me that the hearing had been set for --

Who told you?

September 11th, and the panel knew about it. Then we looked through the files and discovered that there had been no notification.

Who was the somebody who told you?

I don't know.

Of the hearing?

I don't know. Mr. Hoffa was there, Mr. Connover was there; Mr. Gibbons might have been there, I'm not sure, he may have been. We were there for a couple of hours that afternoon on various matters, this was only one of them.

You remember in my letter of July 9th, which I addressed in my letter, rather, of September 2nd, which I addressed to Mr. Hoffa, enclosing a copy of the Price-Waterhouse report, I stated in the concluding sentence that Mr. Hertz, the Manager of Price-Waterhouse was ready and willing to confer -- was that the individual whom Mr. Hoffa had assigned to prepare the charges? You recall that, don't you?

That was in that letter; yes, sir.

Was that discussed at all when you had this meeting with Mr. Hoffa that Mr. Hertz of Price-Waterhouse who would like to assist in the preparation of these charges --

It might have been --

These charges --

I'm sorry; it may have been. Again, my recollection is faulty. I don't think we discussed the problem of charges at that time.

You knew, of course, didn't you, that the section provided in the Constitution, that at least ten days' notice of the hearing

Surely.

Must be given?

Surely.

You know, too, don't you, that before September 8th, when you wrote that letter that the Appellate Division of the State of Illinois had reversed a decision of the International in taking over the Local by failure to give the ten-day notice, didn't you?

Yes, sir; that's why I changed this panel, for the purpose of the hearing.

Yes. Now, I want to ask you: What do you mean by this sentence here, the first sentence of the second paragraph of this letter? (Reading)

Quote: This is to advise that on Thursday, September 11, 1958, a panel, as proposed by the Board of Monitors, will be in Philadelphia to conduct a preliminary investigation.

Did we ever propose such a panel, the Board of Monitors?

You proposed -- yes, sir -- you proposed --

To conduct a preliminary investigation?

No; No. You proposed a panel to look into 107 --

To hear charges?

To hear charges, that's right, sir.

Not to conduct any preliminary investigation?

That's right.

Now, getting to the third position with respect to the Board of Monitors ordering the special outside counsel to investigate: Can you show me the section of the Constitution which makes that unconstitutional or improper?

Mr. O'Donoghue, we pointed out to you a section of the Constitution which we thought made that improper. You wrote back to us; you told us that you thought that applied only to trials at local unions. I think that it applies across the board. And further, Mr. Beck was once tried before the General Executive Board. No counsel was employed in that case, the only precedent that we know of for a situation of this type.

Mr. Bergan, our order merely had the International employees' special counsel to assist in the investigation and the preparation of the case for hearing, didn't it?

THE WITNESS: That, Mr. O'Donoghue, was the way your recommendation read in the second letter. I read your Order of Recommendation to require that counsel actively to prosecute the case. Now, you may not have intended it in that fashion. But where special counsel was first proposed, that's the way I interpreted that recommendation. As it stands now, of course, all that counsel-- and it may well have been your intention right from the beginning — this counsel is to do nothing but advise the charging party in the presentation of the charges.

Well, would that letter which followed with the clarification — it's now clear in your mind, isn't it?

It is.

You merely wanted the special counsel to assist in the investigation and preparation of the evidence?

Yes, sir.

And not to appear in the light of a prosecuting attorney?

Correct.

It is well understood throughout trade union circles that in the affairs, disciplinary hearings and trials, they do not permit outside counsel, lawyers, that is, isn't that correct?

That's what I am told. I can't qualify as an expert.

It's the practice, I take it, in the International Brotherhood of Teamsters?

I have always understood that that was the practice.

Yes. This section of the Constitution you refer to, namely, Article 18, subsection 1 (b), provides: He may select only a member of the local union to represent him in the presentation of his defense. That's the section in which you originally based that particular portion of the order — that it was unconstitutional, isn't that correct?

I think so, yes, sir.

Now, with that clarification, you no longer hold that ground?

No; I'm not so sure of that. I still think it's outside the Constitution to require that special counsel be selected to aid in the prosecution of a case. I think it's within the intent — conceded it doesn't say so — I think it is within the intent.

And —

The reason I say that is because I am advised that that is what the practice has been.

You were present the day you and Mr. Williams — you were before the Board of Monitors the day we discussed this particular provision?

Yes, sir; I don't recall when it was. I do recall —

I gave the reason that I thought there should be special counsel to investigate these charges, and independent counsel to evaluate them, because Mr. Williams had personally represented Mr. Hoffa, and Mr. Hoffa may be involved in it, and in the interest of the public, as Court appointed officers, we felt that there should be special counsel selected?

That was essentially the reason you set forth; yes, sir. I don't think that there has ever been any doubt as to the reason that you requested outside counsel; I think that's always been clear.

Can you give me any section of the Constitution which empowers the General President or the General Executive Board to set up an anti-racketeering commission?

No, but there is a section of the Constitution that authorizes the General President to appoint such assistants as he requires, and I think that the anti-racketeering commission can come under that section with very little difficulty.

By the same logic or reasoning, could the First Vice-President take over the duties of the General President, and invoke that very section to appoint special counsel to investigate these charges?

He could except that I think you are overlooking the fact that it has never been the practive to do that. I take it that's as much in essence of Constitutional practice --

It hasn't been the practice to appoint a racketeering commission, has it?

The Teamsters never had one.

Yes. Let's take up now this Smith and Bolling charge: You say that this case is set for hearing?

No, sir; it was heard.

It was heard?

It was heard on the 28th of October.

I want to ask you: Did you ever inquire of the State of Tennessee for a transcript of the testimony of Smith and Bolling on this particular matter?

I never did.

Don't you think that the International, as a measure of caution, to see that this case was properly presented, should have secured a copy of that testimony and presented it at the hearing?

Perhaps they should have.

And with regard to this Smith and Bolling order of the Board of Monitors, has the General President ever ordered an investigation into the Southern Conference to see why they loaned the thirteen thousand five hundred dollars to Smith and Bolling?

I don't know, sir.

We issued such an order, didn't we?

That was in your recommendation.

Order of Recommendation -- that's a portion of our Order of Recommendation, in order that there would be a thorough investigation as to whether or not anyone in the Southern Conference could take union money from the Conference and pay it over to a local for a purpose not legitimate. Did you investigate into that?

I didn't; no, sir.

Did General President Hoffa?

I don't know.

did you alse see that General President Hoffa carried out the second portion of this order: To have Price-Waterhouse go in and go over the books of this local union covering the period of time when, as to when this twenty thousand dollars was paid?

No, sir; and I didn't for this reason: This happened six or seven years ago --

Six years ago -- yes.

I think there are more important things, frankly, at the present time for the Brotherhood of Teamsters to be doing than to be reviewing the record of something that happened seven years ago -- I honestly do. And further --

Mr. Bergan, that argument was made to that Judge in Tennessee, wasn't it?

It could have been, I don't know.

And also, didn't the complaint use that argument, that Members Wells dissented from, that this was bringing up ancient things, and in going back so long --

Well --

Didn't it --

MR. WILLIAMS: Let the witness answer the question.

THE WITNESS: The complaint brought it up in a different context. The context in which the complaint brought it up was as an answer to the attempt by the General President to assume original jurisdiction. The Constitution says he can only assume original jurisdiction in something eminently dangerous, or something of that nature, to the local union or the International. The complaint brought it up in the context of saying that you may nor or cannot say that a situation is eminently dangerous if it happened seven years ago. It seems to me the obvious answer to that is that when new light is thrown on something, such as to bring a local union or the International into disrepute, that you then have a dangerous situation. However, I don't think that the same argument would hold all the way across the board. I think it holds in answer to that section of the Constitution, and so did the Judge in Tennessee, when he refused to grant the temporary injunction.

And the Court very quickly disposed of the contention about going into an ancient matter, and stated: When this was disclosed in 1957, it was just as if it had been committed the day before -- and that was the basis of his reasoning?

In that context; yes, sir.

Yes, sir. And don't you agree, as a lawyer, that at any time, no matter how long ago it happened, if evidence comes to light wherein the courts of justice have been polluted or tained with a bribe, that it is the duty of every lawyer, and it is the duty of every Court, and it is the duty of every legislative committee, to reveal it, and see that punishment is handed and meted out -- don't you agree?

Yes; I can agree to that easily.

Now, let's go to Feldman. There is also one portion of the Feldman order that hasn't be complied with, namely, there was testimony before the Senate Select Committee where Feldman formed an independent union --

Dewey's, I believe.

Yes; Dewey's restaurant --

Something of that nature.

And he is alleged to have received seven hundred and fifty dollars, and had all of these people join the union, sort of a paper local, as it were. We asked that that be investigated, and a report given back to the Monitors -- has that been done?

That has not been done.

Now, with respect to this filing of suspension notice against Mr. Feldman, sometime around August the 28th, the suspension from office, the Board of Monitors never received a copy of that, have they?

I don't know. I thought they had. If they haven't, it's my fault.

Until after your answer was filed -- that's the first time they received that?

That's an oversight on my part, for which I apologize.

Mr. Bergan, I believe that you know that the Board of Monitors sent out a questionnaire to all the trusteed locals, on or about August 15th, 1957?

Yes, Mr. Bartosic told me that.

And we gave you a copy of the questionnaire?

At my request, he sent me a copy; yes, sir.

Yes, and we gave the trusteed locals until September the 15th to answer this questionnaire to the trusteed locals, did we not?

I haven't checked it that closely. I think -- if you say so, I'll accept it.

(By Mr. O'Donoghue) During that period of time, while this questionnaire was out, from August 15th on, we then, on or about August 18th, I believe, issued this order for rules of elections, for trusteed locals and also requested that it apply likewise to the autonomous locals during the forthcoming fall elections, right?

Across the board, yes, sir.

That was Order of Recommendation Number 20?

Correct.

Now, in the last paragraph of that order, it says: (Reading) The Board of Monitors also recommends that be August 27th, 1958, General President Hoffa appoint a committee to confer with the Monitors and their staff, concerning these rules and model provisions for inclusion in local union by-laws. Was there such a committee established by August 27th?

By August 27th -- I think probably not.

Yes.

There was a first committee --

Later?

Later, yes.

The first answer that we got from this was a letter dated --

September 10th.

September 10th, in which General President Hoffa said that, in substance, that he couldn't adopt them because certain provisions were unconstitutional and others were unworkable — right, in substance?

That is correct, in substance, yes, sir.

He didn't point out which ones were unconstitutional nor did he point out which ones were unworkable, isn't that right?

That's correct.

On September 16th —

However, —

The Board of Monitors appeared before the General Executive Board. Before we went up there, we had sort of an agreement in which we asked that an opportunity be given us by the General Executive Board so we could do a little bit of home work before we appeared, isn't that right?

I think that's correct.

Yes. This night we appeared, and after — we were only to go up there to discuss the convention, and after we disposed of the matter of the convention, we were taken in the back room and shown a demonstration by the National Cash Register of the National Cash Register receipting system, and then we came back in, and General President Hoffa then started to go over each rule, didn't he, before the General Executive Board, isn't that correct?

I'm not sure whether it was in that sequence; you are right — those two events did happen. I'm not sure which came first.

But they did happen.

Surely.

Our exhibit will show how it followed in sequence.

Surely.

And I told I wish he had given us notice that he wanted to discuss these rules of election?

Yes, sir.

You didn't know he was going to discuss the election rules, did you?

No, not to that fine --

You didn't --

MR. WILLIAMS: Could you let the witness answer?

THE WITNESS: I didn't know it was going to be discussed to that extent, no, sir.

(By Mr. O'Donoghue) Mr. Williams didn't either, did he?

I can't speak for Mr. Williams.

You said sometime later neither Mr. Williams nor Mr. Wells knew it was to be discussed -- it was just brought up out of the clear --

MR. O'DONOGHUE: Is that stipulated, Mr. Williams?

MR. WILLIAMS: I don't know what Mr. Wells knew, Mr. O'Donoghue.

MR. O'DONOGHUE: Well, Mr. Wells has told me he didn't know it either, and you told me you didn't.

MR. WILLIAMS: I told you, and you said it before

THE COURT: Both of these gentlemen are here.

MR. WILLIAMS: Yes.

THE COURT: The Court will hear from you.

MR. WILLIAMS: I said, your Honor, when Mr. O'Donoghue made this point on the very first day of this hearing that it was true that I didn't know there was going to be a discussion of these rules, as it turned out, for about an hour and a half, but I pointed out in the record that it came as a result of Mr. O'Donoghue's invitation to discuss them, which is right in the record on the very first day.

MR. WELLS: Likewise, if your Honor please, my memorandum, when the original rules were promulgated, suggested that there be prompt discussion of them with the union officials, and that had been my consistent view all along. I understood that my colleagues also wanted such discussion. However, I did not have any specific notice that there was to be discussion on this specific evening about that matter.

MR. O'DONOGHUE: I'll let the record stand for itself when it comes to the oral argument. I did not invite discussion of the rules. I was surprised that they were going to be brought up, and I objected to them going through at that time without prior notice.

(By Mr. O'Donoghue) Now, Mr. Bergan, you knew, of course, from discussion that we had during this period of time that the Board of Monitors did not want any local union, trusteed local union, released until there had been agreed upon these rules for nominations and election of officers, and some rules that would assure a democratic election, isn't that correct?

Yes, sir; that's correct.

Now, isn't it also true that under date of October 14th, the Board of Monitors addressed a letter to General President Hoffa, telling him that the Board of Monitors was ready to release the trusteed locals for election purposes?

Yes, that's correct.

I hand you a copy -- a thermothax copy of a letter dated October 14th, 1958, addressed to General President Hoffa, Is that the one -- is that an exact copy?

That's the one -- yes, sir. Uh-huh.

MR. O'DONOGHUE: I now offer the letter dated October 14, 1958, to James R. Hoffa, General President, as Monitors' Exhibit Number 74.

MR. O'DONOGHUE: (Reading) James R. Hoffa, General President. Dear Mr. Hoffa: The Board of Monitors has completed its study of the problems relating to the release of the remaining trusteed locals, and is now prepared to counsel with and make recommendations to the General Executive Board as to the release of the individual trusteed locals. Accordingly, it is requested and recommended that the International Union promptly inform the Monitors as to which trusteed locals the International Union is prepared to release from trusteeship. It is also requested that the International Union appoint a representative to confer with the Monitors concerning this matter. Yours very truly, Martin F. Donoghue, Chairman.

Now, Mr. Bergan, I noticed this morning when we got into this question of eligibility, as construed by the International, in the 1952 Constitution, Article 10, Section 5(c), I take it?

Uh-huh.

Well, isn't it true today, that as to autonomous locals, General President Hoffa construes the 1952 Constitution, that if I'm a member under check-off, and it isn't paid by my employer on the first of the month, I am not eligible within the two years?

Sure, no question about that; I said that this morning.

Yes. So we have this method of interpretation before the Court as to trusteed locals Mr. Hoffa gives the construction of the Constitution one way, but as to autonomous locals, he gives it another way, isn't that correct?

That's correct.

Let's go over this question of Joint Council 13, this publication of this article that was in the paper: You were present before the General Executive Board, weren't you, Mr. Bergan?

Part of the time.

Yes.

It was well understood, within the confines of this order, under section one of this order, everyone knew that the Board of Monitors must first pass upon any appeal and make a recommendation before it was decided by the General Executive Board?

Well, it is well understood now. There was some difficulty about it at that time, as I explained this morning. All of the parties had apparently agreed to be bound by what the General Executive Board said, so President Hoffa didn't think, apparently didn't think, there was necessity for advising the Board of Monitors. In any event, you are right --and there's no dispute.

Well, of course, any member who take an appeal to the General Executive Board is bound by the decision of the Board, isn't he, under the Constitution?

Under the Constitution, but there have been a lot of them in the last month writing to the Board of Monitors.

Right. Wasn't an effort made to get complaints in this particular Joint Council 13, not to take the matter before the Board of Monitors?

I have no knowledge of that one way or the other.

Mr. Bergan, going back to this conversation that you had with Mr. Hoffa on September 8th, 1958, the day you sent this letter up to Local 107, was there any discussion with Mr. Hoffa that there was going to be a suit filed up in Philadelphia by 107?

I think possibility may have been raised but nothing more than that.

What do you mean by that, possibility may be raised?

I think there had been -- now I have got chronology mixed up here possibly -- but I think that there may have been some indication from the authorities at 107 that if the International tried to do anything that they would go into court and try and stop them. I know we received something like that at a later date.

That was the time that the business agents were over to your office, the month or six weeks ago perhaps.

At this meeting, was it discussed that there was going to be a suit filed by 107?

No, not specifically; no.

But notice had already gone out that the panel was going to be there September 11?

No, notice had not gone out. That was the problem.

An understanding?

That was the problem at that time. As I reconstructed it, the panel had been notified but no notice had gone out to the local.

Had there been any other discussion with Mr. Hoffa that other suits would be filed against the Board of Monitors by virtue of certain orders?

Well, we knew, for example, that Mr. Presser told us that if we did such and such he was going to sue. To that extent, there was that discussion.

Mr. Presser came to Washington and told Mr. Hoffa?

He told you, I think, too.

But he told Mr. Hoffa that if the Board of Monitors construed this constitutional provision about eligibility in a certain way that there would be a lawsuit?

I think that is correct, yes, sir. That was my understanding.

You knew a lawsuit was going to be filed by Smith and Boling too?

No, I did not.

Was there any discussion at the International's office that Smith and Boling were going to file suit?

There might have been. They may have indicated the possibility of that. I had heard that if we attempted to exercise original jurisdiction that they would resist it in the courts.

Did Mr. Hoffa invoke the constitutional provision against either 107, Smith and Boling, or even against Presser about filing suits against the International without exhausting internal revenues?

No, sir.

Relative to this question of Mr. Hoffa's interpretation that I asked about this morning of the '52 constitution, have you ever seen a copy of this letter signed by Mr. Hoffa, dated October 1st, 1958, addressed to Mr. Otto H. Frobe, Secretary-Treasurer, Teamsters Local Union 100?

No, sir.

Would you please read the letter.

This was attached, wasn't it attached to your petition?

We haven't introduced it in evidence. No, it was not.

If it had been there, I would have seen it. But I am not familiar with it. It is addressed to Mr. Otto H. Frobe, Secretary-Treasurer of Local 100 in Cincinnati.

"Dear Sir and Brother:

"This will acknowledge receipt of your letter of recent date to John F. English, General Secretary-Treasurer, relative to the provision in the International Constitution, Article X, Section 5 (c), on the payment of dues.

"The International Constitution now, specifically states in Article X, Section 5 (c): 'All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Where membership dues are being checked off by the employer pursuant to properly executed checkoff authorization, it shall be the obligation of the member to make one payment of one month's dues in advance to insure his good standing. Thereafter, he shall remain in good standing for each consecutive month for which the monthly check-off is made. Any member fialing to pay his dues at such time shall not be in good standing.' The new Constitution specifically spells out what a person under check-off should do.

"Under the old Constitution, adopted in 1952, Article X, Section 5 (c) states: 'All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Any member failing to pay his dues at such time shall not be in good standing.' Under the old Constitution, the burden was placed on the member to make sure his dues were paid up on or before the first business day of the month, even though he was under check-off. It was the member's responsibility to make certain he was in good standing.

"If any provision in local by-laws is contrary to this section of the International Constitution, the International Constitution shall prevail.

"I believe that this answers your inquiry.

"Fraternally yours, James R. Hoffa, General President."

You know in Local 100's case they had by-laws since 1949 approved by the International which by-laws provided that if the member's dues came in after the first day of the month they still remained in good standing? Right?

I learned that from your recommendation with regard to 100.

And I read from the stand where Local 100 showed how Dan Tobin as General President in '49, and Beck in'53, had approved their local constitution. Correct?

Correct.

This decision of Mr. Hoffa overturns those two constitutional opinions of Beck and Tobin?

MR. WILLIAMS: I am sure an inadvertent misstatement of the record. But there is no constitutional opinion in this record by Mr. Tobin and Mr. Beck concerning the eligibility clause of the 1952 constitution. There is simply approval of some by-laws submitted by Local 100 during the regime of Mr. Tobin and Mr. Beck, which is very different from constitutional opinion. I think the record should be corrected.

(The last question was read by the reporter.)

MR. O'DONOGHUE: I will reframe the question.

The letter I read here from the record from Local 100 showed that General President Tobin had approved a provision in Local 100's constitution providing that payment of dues coming in after the first of the month could be valid and legal eligibility and that section of the constitution would not run against and also that President Beck had approved the '53 constitution that if dues under check-off came in after the first of the month they would still be in good standing. This particular letter of General President Hoffa dated October 1st, 1958, to Local 100 sets aside the two approvals by those two former general presidents of the 100's constitution, doesn't it?

Yes, to the extent that 100's constitution is contradictory to the International Constitution.

Mr. Williams asked you this morning a question, gave you a question that General President Hoffa interpreted the constitution more liberally with respect to trusteed locals than did General President Beck and General President Tobin. After reading that letter of October 1st, 1958, of General President Hoffa, do you still remain of that opinion?

Yes, sir.

MR. O'DONOGHUE: May I introduce this letter as Board of Moniter's Exhibit No. 75?

BY MR. SCHMIDT:

Were you present, Mr. Bergan, at the discussions within the International leading to the acquisition of the primary blanket position bond which I think is dated August 22nd but became effective August 12 of this year?

I was present, Mr. Schmidt, during one very preliminary discussion.

Do you know whether or not the International put up any collateral for the issuance of that bond?

I am not familiar with any of the financing arrangements, sir.

Was your office, the office of the general counsel, requested to give legal advice as to the propriety and suitability of that bond?

The only question that we were asked is the one I indicated to Mr. O'Donoghue this morning, and that is the -- early this afternoon perhaps -- and that is the question which is raised by Section 8 (a), I think, of that particular article which says that each individual should procure his own surety bond. I was asked in that context whether I thought it was constitutionally proper for the International to secure a bond which covers the positions filled by these individuals, and I told them that I did.

Prior to that time, however, a great number of the officers had been covered by bonds previously acquired; is that correct?

Oh, yes.

What happened to those bonds?

They were all canceled. Local Unions instructed to secure return of premiums paid. If they were three-year bonds and had served a year, for example, local unions were instructed to secure rebate.

Was the office of general counsel for the Teamsters requested to give an opinion about the suitablility of a bond covering all of those offices in the same amount?

No, sir. However, I can tell you this: that I have had at least one talk with Mr. Mullenholz since this bond went into effect with regard to the possibility and the feasibility of having this position bond coverage raised in amount for certain local unions, which are of the larger varieties of course.

Do you know, for example, what the average cash balance for Local 299 or 107 would be?

I haven't the slightest idea.

You do know it is in excess of a million dollars at times?

I don't know. I wouldn't know where to begin to estimate that, Mr. Schmidt.

Are you familiar enough with the Teamsters subordinate bodies to recall that some of the local unions have treasuries of less than $30,000 and some far more than $30,000?

I would assume that is correct, but again, they are just figures to me. I am not that familiar with the subordinate bodies.

But under this blanket bond arrangement, if I understand it correctly, offices that have to do with union funds in the millions are bonded in exactly the same way as offices that have to do with union treasuries of the order of $1,000 or $2,000?

That is correct.

You recall being at a Monitor's Board meeting, I think it was the very first meeting attended by Mr. O'Donoghue, and I asked Mr. Mullenholz to come down with the bond in the International's file pertaining to 107?

I recall that. It wasn't the first one but it was certain during that first session. Yes.

And you recall that Mr. Mullenholz came back and gave me one bond covering only Mr. Ray Cohen?

I don't recall, no, sir, what specifically happened in that instance.

Well, there were other officers of Local 107 who handled funds; isn't that correct?

Yes, sir; that is correct.

And do you recall that you never saw in the International files any bonds covering any officer except Mr. Cohen with respect to 107?

I never saw any bonds in the International file, Mr. Schmidt. I don't know to this day what local unions and what officers in what local unions were bonded prior to the time that we made an attempt to up-date the bond information in the International's possession.

Were you aware at the time that I called this to your attention that the bond covering Mr. Cohen had already been canceled by its very terms?

I was not aware of it.

Did I call it to your attention at that time?

You called it to my attention I believe at that time.

And you correctly testified before that failure to have a bond does not cause automatic expulsion from membership, but isn't it true that the failure to have a bond means that the officers in question who should have a bond under the constitution are deprived of holding office during the time that they don't have a bond?

I am not sure of that. I think the constitution will speak for that area.

Would you look at that Section 8(a) and see if that refreshes your recollection?

What article is that, Mr. Schmidt?

That is Article X, Section 8(a), page 40 of this book.

I think the pagination is a little bit different. 8 (a) --

It's really 8 (b).

The first section of this first sentence reads that any local union, secretary-treasurer or business representative failing to obtain or secure or provide a suitable surety bond or suitable collateral satisfactory to the General Secretary-Treasurer or the General Executive Board shall automatically be deprived of holding any office for which a bond is required.

Doesn't that mean that during the six or seven months when Mr. Cohen was not covered by a bond he was not really holding office and that union was without officers?

Mr. Schmidt, it would appear so, certainly from the first sentence of this section. But I have never seen a situation in which this section has been called into operation. I don't know how it would work as a mechanical matter. I don't know who, for example, would run the local union if that were the case.

This section of the constitution also requires that the International should maintain, if it is alert and doing its job, a full file of all bonds; isn't that correct?

Yes, it does.

Actually, the International dueing the first months of the monitorship, the first four or five months of the monitorship, was not maintaining a full file of bonds; isn't that correct?

That is correct, and it goes back far beyond the first couple of months of the monitorship.

Yes, it goes away back. But I am talking about the period of the monitorship. My statement was correct?

You are correct, yes, sir.

Now, Mr. Bergan, when I brought this to the attention of yourself and Mr. Mullenholz, didn't you or he or both of you together prepare a list of the various locals which did not have bonds in your files?

We attempted to prepare such a list, yes, sir.

How many were on that list which didn't have bonds in the central offices of the International?

I couldn't even estimate. I wouldn't have the vaguest idea, Mr. Schmidt. I recall there were two or three consecutive meetings at which we brought you interim reports on attempts to up-date the bond information in the file. But I am sure the list would speak for itself if it is still available.

And as a result of my inquiry didn't Mr. Mullenholz and your office institute an inquiry on your own part to find out whether there were officers throughout the International who were not covered by a bond?

The International instituted a blanket inquiry to every local union to determine who was and who was not covered and in what amount, throughout the country.

Isn't it true that you found eventually there was a list of some 75 who were not bonded, 75 officers?

I couldn't say -- 75 officers or offices of 75 unions?

No; 75 officers.

I don't know. Mr. Mullenholz might recall but I don't.

Isn't it also true that you met in connection with that inquiry further difficulty in that you discovered that some of these officers were not bondable?

I never ran into that specifically. The International may have.

To your knowledge didn't the International run into that situation?

Let me put it this way: They ran into situations in which the bonds of certain individuals had been revoked. I don't know, I assume that would be the same type situation. Yes, we ran into problems, particularly in areas where a bond had been dropped, for example, of having the individual rebonded.

Mr. Bergan, wasn't it because you had a number of officers who were unbondable that the International finally had recourse to the device of getting a blanket bond?

That was certainly one reason. There is no doubt about that.

And doesn't the constitution place upon the officer himself the duty to get the bond?

I think you are reading the constitution a little too narrowly, Mr. Schmidt. I think the important thing under the constitution is that the officer be bonded, and I don't think it makes a great deal of difference who get the bond for him. The constitution says that the officer or the business representative or whoever it may be shall procure a suitable surety bond. I think that is the language of the section. And I think that is met in substance when the bond is procured for the office. The money is safeguarded and that is certainly the purpose of the section.

You don't think it is relevant at all whether or not a particular officer is unbondable because of criminal record or because of misappropriation, as long as the International can get a blanket bond?

In that context, no, sir. I certainly think it is relevant in other context. But in the context of the surety bond area, I don't think so, sir.

Were any of the officers who had failed over a period of time to get bonds under this section ever brought up on charges to your knowledge?

For the failure to have bonds?

Yes, for their failure?

Not to my knowledge, no, sir.

MR. WILLIAMS: He has already said he has only been in this since April. You are talking from April on?

MR. SCHMIDT: No, I am not talking from April on. He has testified by hearsay on a number of matters that antedate April because he is a good investigator and he investigated your files and the files of the International. And he gave us what the record showed, and I am therefore asking him whether is investigation covered that period, indeed, and the prior.

MR. WILLIAMS: If this is relevant, then I think you ought to ask him first whether he conducted an investigation that antedated his relationship with this union to make a determination in accordance with the question you are asking him, namely, whether anyone was expelled or prevented from holding office because he had his bond revoked.

MR. SCHMIDT: Mr. Williams, you have a full right to examine the witness at your pleasure.

MR. WILLIAMS: Then I object to the question, your Honor, if he refuses to ask the proper foundation questions.

MR. SCHMIDT: Your Honor, may I be heard?

THE COURT: Objection overruled. If the witness is able to answer from his personal knowledge or from the records which he inspected, he may do so.

I have not made such an inquiry or an investigation of that nature, Mr. Schmidt.

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Now, with respect to the election rules that were suggested by the Board of Monitors in Order of Recommendation No. 20 on August 17, 1958, have there been changes made by the Board of Monitors with respect to those rules since that time?

Yes, sir; on the 24th of October the Board of Monitors forwarded a revised draft of rules for the conduct of elections.

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MR. WILLIAMS: Would you indicate which it is?

MR. O'DONOGHUE: 63.

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RECROSS-EXAMINATION BY MR. O'DONOGHUE:

Mr. Bergan, you have heard me speak about these trusteed locals?

Yes, sir.

And one of the reasons why they were to be prepared, you have heard me state, was the fact that we wanted to get experience from these trusteed locals so that we could carry out our function as a Board of Monitors in conducting the election for delegates, haven't I?

Correct.

And one of the reasons why I sent Scran to New York to confer with the Honest Ballot Association, because the decree provides that the Honest Ballot Association or some other agency of like like will supervise the election for delegates to the convention; correct?

Where practicable.

Right. And that I wanted the Honest Ballot Association, the American Arbitration Association, or some like agency, to have experience in supervising the trusteed local's election and other local union elections in the interim. Correct?

You always told us that, yes, sir.

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TRANSCRIPT OF PROCEEDINGS

November 10, 1958

Testimony of - William T. Mullenholz

MR. MULLENHOLZ, SWORN

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DIRECT EXAMINATION BY MR. WILLIAMS:

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TRANSCRIPT OF PROCEEDINGS

Date: Nov. 12, 1958

Pages: 560 - 715

Testimony of William T. Mullenholz

MR. WILLIAMS: On No. 1, I will stipulate with you here that it will be put on the agenda of the General Executive Board meeting for Price-Waterhouse to have full and complete consultation with the G.E.B.

* * * * *

Q Would you state your full name, Mr. Mullenholz.

A William Thomas Mullenholz.

* * * * *

Q What is your occupation?

A Comptroller of the International Brotherhood of Teamsters.

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As I understand it, Mr. Peterman of Price Waterhouse Company was the one designated by Mr. Herz, the Price Waterhouse partner here in Washington, D. C., to review that particular phase of the International's operation, that is, the relationship between the local unions and the International. I consulted with Mr. Peterman on many occasions. Approximately, oh, I'd say at least 15 times, 15 different occasions, that he came into my office and sat with me for periods ranging from a quarter of an hour to perhaps an hour or an hour and a half or two hours, relative to this relationship between the local unions and the International. This happened on many occasions. We had quite a few consultations. He asked me for recommendations as to what my opinion was on the type of relationship that should be developed. And we generally consulted rather freely on this. Mr. Peterman consulted not only with me; he consulted with my assistant, Mr. Casey. He had completely free access to all of the records in the International Union; and recourse to such forms and records as had been used by the International in its relationship with the local unions and vice versa.

MR. O'DONOGHUE: That is stipulated and agreed, and I will also stipulate and agree that Mr. Herz and Price-Waterhouse have the highest compliments to

Mr. Mullenholz' integrity and ability.

* * * * *

MR. O'DONOGHUE: May it please the Court, I will answer that. Yes, we are still contending at this time that the records of the International are not sufficient with a flow of reporting from local unions with respect to this record keeping. But that is only one minor ground as to why a convention should not be held. We have not even started on our whole program of going into the auditing procedure under Section 5 of the International and of the local unions. Price-Waterhouse's report, which initial survey which the Board of Monitors adopted and which was reported to the Court in our August 1st report, shows that they were to cover four essential areas. First, the International. That even hasn't been completed. Secondly, Joint Councils and area Conferences, and audit of that. A manual to be established as to how that will be audited. Local unions, we haven't even been able to get into a local union. We have to have Price-Waterhouse go into that. And their report, which is in the record here, shows to the Court how they reported to the Board of Monitors that what auditing procedure which they would adopt for local unions that would be uniform and a manual set up to guide auditors to go in and audit local unions and the flow of the reports back to the International. They suggest to us that we write them into the model constitution and by-laws.

Mr. Williams is not just going to trap me into a statement so that we would have a factual issue here as to whether or not the records of the International even at the present time are sufficient merely to hold a convention.

The question is that there are numerous reasons why a convention should not be had at this time. In our petition we cite four reasons. First, not sufficient records of the International; there is no model constitution and by-laws; we haven't finished our auditing procedure; and I think the fourth one is set forth at the top of this page, the release of trusteed locals.

And first --

MR. WILLIAMS: Excuse me, but I am only addressing myself to one reason, and if that is not a reason being urged, then I wouldn't put or over this line of testimony.

But I think, if the Court please, that Mr. O'Donoghue ought to say whether or not the board is still contending that the records of good standing and eligibility are not sufficient for the holding of a convention. Because if that is one of the reasons being urged, I would like to meet that by proof, Mr. O'Donoghue. If it is not, I am not going to trespass on the time of this Court by doing it. But I don't think it is germane or helpful to the Court to say all the other reasons that you think for the not holding of a convention. We can meet those as we go in argument or otherwise. But now we are concerned with records. And if the board is saying that the record keeping is not sufficient for the holding of a convention and that is one of the reasons why a convention shouldn't be held, I would like the opportunity to meet that. If you are not saying that, then I will cheerfully agree that this line of proof is not relevant to the issue.

MR. O'DONOGHUE: The records are not sufficient at the International for giving the good standing of the membership of the members in local unions. We have stated that in our petition. That is merely one of the grounds. As I state to the Court, there are numerous others. And this flow of reporting of records to the International, we have no recommendation upon. It is still in the formative stage, because Price-Waterhouse in a measure has been thwarted in even being able to make a proper audit or coming up on anything final in this whole picture.

MR. SCHMIDT: May I be heard on behalf of the plaintiffs, your Honor? I think I join with everything Mr. O'Donoghue has said and I also would like to argue that this part of proof that Mr. Williams proffers is premature because under the issues raised by the petition our auditors have not yet had an opportunity to study the situation fully, and for Mr. Williams to stand here and say with self-serving declaration that our system is the best, without having the monitors' experts go over that and find out whether it really is the best, means that he is putting in proof ahead of the time when we will raise that very issue.

MR. WILLIAMS: I think you have raised the issue by your pleadings; because you contend in the pleadings that the record keeping at the moment on the question of good standing, right at page 5, is so inadequate that a convention couldn't be held at this time. And that is a very sharp issue of fact, because, if the Court please, we are prepared to show that the record keeping of good standing of eligibility of this union is equal to or superior to that of any union in the country. And I can offer proof right now to show how eligibility records are kept at the local union and how for the purpose of the convention those records can be sent to the International. They can be used by the credentials committee by the simple device of microfilming. So there is absolutely no reason at the present time on this basis, on this basis — and this is all we are addressing ourselves at the moment -- for not holding a convention. This is all we are talking about at the moment, the accounting procedures.

MR. O'DONOGHUE: Mr. Williams, in order that we can state this to the Court, you will agree that there were no records in the International of the good standing membership from local unions at the time Price-Waterhouse made their report in August and that their report is accurate on that?

MR. WILLIAMS: I certainly do, because, Mr. O'Donoghue, there is no necessity for that type of record to be kept in the International, because --

MR. O'DONOGHUE: The auditors will get into that, that there was none.

You now say that there are certain records in these machines which are kept at a local level, that they could be microfilmed and sent in to the International and could be used there, yes. Now that is a proposition which they submitted to Price-Waterhouse the one day that they met on this issue, about September 18. Price-Waterhouse brought an expert down from New York and because of a question, that they had voted to hold this election the night of September 16, we came in with our petition. And that raises this question, you see, as I am advised by Price-Waterhouse, that they want to study this proposition. They want to be advised: Shall we just recommend something which will be a temporary stopgap to hold a convention quickly, or do you wish us to approach this problem in the way of an overall keeping of permanent auditing system flowing from a local union to the International. Actually, there is nothing that we could even present to the Court, and I have not even definitely made up my mind.

THE COURT: Gentlemen, what are we talking about? Eligibility for representation in the national convention?

MR. O'DONOGHUE: That is one area of it. We are also talking about permanent auditing records, even to be kept by a local union under Section 5, and how they shall flow back into the International so as to find out how much money is collected and different things like that. We are talking about -- it is not only convention, it is this whole broad sweep of auditing.

THE COURT: I just wanted to make that clear in the record.

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Testimony of Arnold Carl Knoebber

ARNOLD CARL KNOEBBER, SWORN

DIRECT EXAMINATION BY MR. WILLIAMS:

Q Would you state your full name, please

A Arnold Carl Knoebber.

* * * * *

Q What is your present occupation?

A I am manager of the accounting machine sales division of the National Cash Register Company in Washington.

* * * * *

A Well, I was called to the office of Mr. John F. English, General Secretary-Treasurer, and I was told that I would have an opportunity to study and suggest and design a system for record keeping at the local level and I was questioned very thoroughly as to my ability, my capabilities, experience in unions and so forth, at which time I told Mr. English that I had worked with a number of unions in Chicago, because I had formerly been employed in our office in Chicago. And he told me that this was going to be on a strictly competitive basis. He laid out certain requirements that he insisted be met and told me that he was calling in various other bookkeeping accounting machine companies. At that time I appreciated the challenge and went to work on the outline of this system.

* * * * *

And it was necessary that we go to the factory, sit down with the engineers and tell them the requirements of this particular system. And this machine is a specially designed -- I can say it has never been built for any other line of business, let alone any other type of union. And when we finally came up with all the answers that Mr. English had asked, we again came back to Mr. English, who seemed rather enthused about it. He called in a Mr. McGinley, who is now deceased. He was a senior member of McGinley and McGinley, a certified public accountant. I believe that he asked for him, from him, an opinion as to the accounting ability or applicability of this machine to their problem from all good accounting standards. At that time Mr. McGinley approved it. And then Mr. English called in --

THE COURT: Was that in writing?

THE WITNESS: No, sir. That was a verbal approval.

I demonstrated the machine to Mr. McGinley and he -- At that time Mr. English called in approximately 50 of the secretary-treasurers of their locals throughout the United States and a goodly portion of their general executive boards. He asked me then to demonstrate this machine to their General Executive Board and it met with approval, at which time we started on an installation program, about four years ago.

I have traveled all over the United States, Canada, up and down the West Coast, demonstrating this machine to the various locals, to the various Joint Conferences, and I can say that its acceptance has been approximately 450 machines in as many locals, and it has met and meets all of their requirements.

Q (By Mr. Williams) Covering how many members?

A Covering, the latest count, I would say 1,100,000, that is an approximate figure, or about 71 per cent of their total membership.

* * * * *

THE WITNESS: Your Honor, this is a bookkeeping machine. It's a basic machine built by the National Cash Register Company for approximately 75 years. The machine is widely used in department stores, banks, building and loans, and so forth.

However, there are certain features on this machine which had to be engineered and built in especially to meet the demands or requirements of the Teamsters Union.

Now, each member in the local, a ledger card such as the sample which you have before you, is assigned, which shows the name, the address, the man's ledger number, his social security number and, as you can see, all of the other pertinent information. When a man becomes a member of a local or if he has been a member of a local an identification card is furnished him which shows similar information but it is signed by the secretary-treasurer. We might compare that to a driver's license or a registration certificate and so forth. He carries that with him permanently.

Now when that man comes in to make a payment, regardless of what method -- it may be mail, his wife could make the payment or he could make it in person -- he merely gives his number and a ledger card similar to this is withdrawn from a file and it is inserted in the machine in this manner. To positively identify that that is going to his credit, we set up his ledger number, and he may be paying for a current month's dues, he may be paying dues that have been in arrears, or he may be paying dues in advance. It makes no difference. We merely indicate the period that he is paying for, and then at that point we set up the amount of his dues. We tell that he is paying dues, because he has the ability to pay on dues, initiation, assessment or many other types of income, and at that point we operate the machine by merely telling him who has received the money within the local. Each one of the keys on here are assigned to one of the clerical help. The machine is operated.

At that point there are three records, all printed. Here is a ledger record, which you have a sample of before you. Here is a receipt which is issued from a plain roll of watermarked safety paper, which is unchangeable -- it is check paper -- and on that receipt is printed today's date, the member's number, which is more positive, they feel, than his name because we do have a great similarity of names in large locals. It also shows what he has paid for and how much he has paid.

* * * * *

Now, this receipt is given to the member right at that time because they feel that that immediately makes him the auditor of that account.

* * * * *

His ledger card is posted at exactly the same time and all of the amounts introduced into this machine are added into a locked-in total. No one can get into this machine, take the totals out without authority, or without this key to unlock this machine. If an amount is once introduced, it is locked in there and stays there until the end of the month.

Essentially, without getting into the greatest of details, that is the system which is widely in use. This member carries this receipt with him, which is good for just the period he shows. If he is paying for the current month of November, this receipt loses its value at the end of November. If this gentleman were paying through next February, this receipt would be valid until next February. And he receives a receipt each time he makes a payment, which is carried with him and, as you will note on the very face of the receipt, the machine prints this wording: "Receipt of payment must be carried with your official member's identification card." It then shows the local unit to whom he has made the payment;

because he could be a member of a local in Philadelphia, but he could pay his dues in Chicago just by the nature of the fact he is traveling West. And the receipt is also signed by the secretary-treasurer. His signature appears on there from an electrode, which is built within the machine.

* * * * *

THE COURT: But where do you get it to put it in the machine?

THE WITNESS: I don't believe I quite understand you.

THE COURT: Where do you get all this information?

THE WITNESS: Well, when the man comes in to pay his dues, we introduce that into the machine by this. We select his ledger card. We verify that it is the right man and the right ledger card. We merely drop it into the machine in this manner.

* * * * *

THE COURT: Well, then, what do you do when there is a check-off?

THE WITNESS: A check-off, we handle that in exactly the same manner; because the check-off comes in on a large list. So, let's assume that this check-off was rendered by company "A, or barn "A," or whatever it may be. All of the ledger cards of the men working in that particular company are so lined up that as that list comes in, we merely take the first ledger card, we drop it in the machine, we refer to the check-off list, to see that that man, the money has been deducted from his salary, and instead of using an "A" or a "B" cashier here, we merely depress a check-off key, which gives us a running total and positive proof that we have posted everybody on that check-off list.

THE COURT: As of what date?

THE WITNESS: As of the date the check-off list is received.

THE COURT: By the secretary-treasurer?

THE WITNESS: Yes, sir. Yes, your Honor.

* * * * *

Q (By Mr. Williams) What is the approximate cost of these machines, Mr. Knoebber?

A Those machines, dependant upon the number of totals, run in the vicinity of $4300 to $5200. That is before taxes.

* * * * *

Mr. English has asked me to go ahead with the construction of a hundred machines of the smaller variety, which will require an investment in the vicinity of $1800,

* * * * *

CROSS-EXAMINATION BY MR. O'DONOGHUE:

Q Mr. Knoebber, I note that in your direct examination you stated that you undertook this task about five years ago after a conference with Mr. English?

A Yes, sir.

Q I noted directly that you stated that this was merely to get records of dues paying or initiation fees in local unions?

A That is right; to control the income in local unions.

Q Merely to control the income in local unions; right?

A Right.

Q It had nothing to do with the flowing of reports from a local union to the International?

A Yes, it does, Mr. O'Donoghue.

Q At that time, when you went out, it had nothing to do with putting in reports from the local to the International?

A Yes. Yes, it did.

Q Do you have a monthly report that goes into the International?

A I believe I have a blank copy of it. Yes, I believe this is a current copy.

Q After I come into a local union and pay my dues and I am the secretary-treasurer, and you punch the ledger number, and you punch the amount of the dues, you have my ledger card in the machine, don't you?

A Right.

Q And after you punch it, it goes upon the ledger card, doesn't it?

A That is right.

Q And then you give me back this receipt, here, which is attached to Defendant's 66?

A Right.

Q Is there anything in that manual transaction that goes in to the International?

A No, there is nothing.

Q Now, at the end of the month, at the end of the month, there is a sheet that each local union sends in to the International, isn't it?

A That is right.

Q And all the local does is total up the number of members that have paid dues, do they not?

A The machine totals it up for them.

Q The total is taken?

A That is right.

Q At any rate, what goes in to the International is a number like this, a local union will write 400 dues members paid by 40 cents, and that is all that goes in to the International?

MR. WILLIAMS: Excuse me. I think we ought to put the record in rather than have it described. I will offer it, if you wish, as a defendant's exhibit. It is the best evidence of what it contains by the way of information to the International.

MR. O'DONOGHUE: I will ask him questions first before we get this in.

Q At any rate you state, Mr. Knoebber, that the secretary-treasurer would take the total off of the machine. At any rate, there is nothing on the report that goes in to the International that shows it is taken off the machine, does it?

* * * * *

Q (By Mr. O'Donoghue) Let's just finish this up, Mr. Knoebber. The local union has a form furnished by the International?

A Right.

Q And which it sends in to the International each month, right?

A That is right.

Q And that form in a way will show how many dues paying members --

A Right.

Q --paid dues that particular month, correct?

A That is right.

Q And they put the number down?

A That is right.

Q From that sheet, that sheet, the result may be taken from the machine?

A That would be the only source they would have to get it.

Q But there is nothing in the machine that controls the figure of the report?

A Yes, there is.

Q Other than the taking off of the total by the manual entry of the particular secretary-treasurer on the monthly report?

A The machine makes a complete detail journal audit sheet of each and every transaction.

Q Right.

A Which is retained in the machine. I did not take the time of the Court to take that out because it is of a technical nature. I would be happy to do so.

Q But he could make any particular entry that he sends in to the International, couldn't he?

A He could. He could transpose that in any way he wished.

Q As I say, nothing dealing with this report is placed in that particular machine?

A That is right. That is right.

Q Now, you handed me a monthly report, I believe, called remittance statement and supply order. Is this the one that was used, we will say, during the year '55, if you know?

A I do not feel that I could answer that. The reason being, Mr. O'Donoghue, and the reason I have some of these blanks, is that I have been asked -- I believe this was at your suggestion, and it had already been in the works -- to redesign this so that this report when it comes in to the International, and it only requires cutting off a half inch of the form, will be placed in the machine and will be a positive lock between what has transpired and what is being reported. That is being worked on right now.

Q Just before Price-Waterhouse report went in -- let's just stay with this. This particular report here, if I were a local union secretary-treasurer, taking this monthly report which you have given me -- which I will suggest that the record will show that it is Monitor's Exhibit for identification number --

THE CLERK: 76.

Q -- it has here monthly per capita tax 40 cents each. Enter here. The financial secretary-treasurer would put down here 400 and he would multiply that by 40 cents and would be sending in $160?

A That is my understanding.

Q That is for the sheets that went in?

A Yes.

Q Did the International, after Price-Waterhouse report come to them, then call you in relative to the Price-Waterhouse report?

A I have a copy of the Price-Waterhouse report. That is the large, thick manual that was submitted by them, yes. They did call me in.

Q The International did call you in and give you a copy of the Price-Waterhouse report?

A They allowed me to read the copy they had.

Q And you worked, I believe, with Mr. Mullenholz on that?

A I did, sir.

Q Now, at the time when you undertook this survey did Mr. English give you a copy of the International's constitution that was in effect in 1952?

A I do not believe that he did.

Q Did he ask you to take the International's constitution and integrate a modern, electronic bookkeeping system that would be in conformity with the reports that should flow from the local union to the International?

A Yes, he did.

Q He did. Did you devise such a machine?

A I devised such a machine.

Q What sections of the constitution did you go over?

A I did not go over the constitution at that time. Mr. English --

MR. WILLIAMS: Let him finish his answer, please.

A Mr. English gave me -- I was not and have not tried to interpret the constitution -- gave me three definite requirements, and I know that there were many discussions on those.

Q Will you state those three requirements.

A One is that an adequate, up-to-date record be kept at the local level to reveal the true standing of any member at all times. The second one was that a control be placed over all income so that the secretary-treasurer who was accountable for this would be adequately informed as to all income at all times; and third, that a member would receive positive proof of his standing at all times and getting away from the old fashioned dues stamps that they used to have where they pasted and tore them out of books and so forth.

Q So the three requirements, that there would be a record of good standing membership?

A That is right.

Q That had nothing to do with anything that went back to the International?

A Right.

Q Second, there would be a control of the amount of money that came into the local so the secretary-treasurer would know it?

A Right.

Q That merely dealt with the local union?

A Right.

Q The third one was that there would be a record or receipt given to the individual member?

A Right.

Q That had to do with between the individual member and the local?

A Right.

Q What did you do with the reports that went from the local to the International?

A Mr. O'Donoghue, at the time we got into this, it was anticipated by our --

THE COURT: Answer his question, please.

A What did we do regarding that?

Q Yes, the reports going from the local to the International?

A At that point we did nothing, because we felt that that was a part of the overall system which would proceed in orderly fashion as these machines were installed.

Q Did you study the International's constitution?

A I have since that time.

Q I will hand you a copy of a 1952 International's constitution. And I am going to read you this section. It is Article X, Section 7 (a).

> The local secretary-treasurer shall forward to the General Secretary-Treasurer the names of all members initiated or reinstated, together with those who became suspended for nonpayment of dues or for any other cause.

You read that section at the time you went out to the local unions, didn't you?

A Yes.

Q You knew it was there?

A Yes.

Q With respect to this monthly report sheet --

May I have that, please, Monitor's exhibit.

This monthly report sheet from local unions to the International known as Monitor's Exhibit No. 76, was that monthly report sheet then in use in 1952?

A It was in use. I can't assure you that it was in the same form. I don't know. There has been a reprinting of this because of necessity required back there. But generally in the same form, yes.

Q The monthly report, did the monthly report that went from the local union to the International give the names of all members initiated or reinstated and did it do that?

A This monthly report does not. And the one that I was familiar with approximately five years ago, I believe there was a supplemental list attached. But as a part of this report, no, I have never seen that.

Q Nor did the report show those members who were suspended for nonpayment of dues or any other cause, the report, this Monitor's Exhibit 76?

A This does not show it.

Q Did you take that into consideration, that the constitution called for that and that any system that you put in should in a measure integrate this section of the constitution into those reports that would flow from the local to the International?

A I was under the impression that the International was getting this list, which they are getting for mailing purposes. Each new member.

Q I asked you -- we will come to that section later.

A No, I did not take that into consideration.

Q You did not take that into consideration?

A No.

Q Did you also take into consideration the subsequent sentence of Article X, Section 7(a). Also with a correct list of those who take transfer or withdrawal cards and shall promptly notify the General Secretary-Treasurer upon the death of a member. Did you take into consideration that would show such withdrawal cards, or the death of a member that would be gone and be reported back to the International?

A No, I did not.

Q Actually, your report, your machine was designed on those specifically three purposes which you detailed for the benefit of the local union accounting?

A Those were the basic.

Q Now, you asked just a minute ago, you stated that -- I will ask you if you checked this at the International at the time that you went in, the duties of the General Secretary-Treasurer.

MR. WILLIAMS: Where are you reading from?

MR. O'DONOGHUE: I am reading from Article XXII of the '52 constitution, and which is the same practically as the '57.

MR. WILLIAMS: What page?

MR. O'DONOGHUE: It is on page 74.

MR. WILLIAMS: That isn't the duty of the General Secretary-Treasurer, Mr. O'Donoghue.

MR. O'DONOGHUE: It is called the duties of local secretary-treasurers, Article XXII.

Q Now, this section says the local secretary-treasurer shall report to the General Secretary-Treasurer by the 10th day of each month the number of men that are being carried on the books of the local union as good standing members, as of the first day of that month, and all new members who have been initiated during the previous month and all members who have paid up their back dues and again became in good standing. This report must be made on the monthly report blank that is issued by the General Secretary-Treasurer.

You read that at the time that you went into this machine, didn't you?

A Right.

Q And I take it this is substantially similar to the monthly report sheet that the General Secretary-Treasurer sent to the local unions at that time,

Monitor's Exhibit No. 76?

A I am not familiar with that, Mr. O'Donoghue. It is being worked on at present and it is the next order of business. But I am not familiar with their current reporting.

Q Mr. Knoebber, isn't this substantially the same that was in effect in 1952?

A Yes.

Q Now, did you know whether or not this Section 12 of Article XXII was observed, or did you take it into consideration, local secretary-treasurers must report the names and addresses of all new members coming into the local union to the general office?

A Yes, I was aware of that.

Q Was that observed by the International?

A I don't believe I am qualified to answer that question.

MR. WILLIAMS: This witness isn't qualified to answer any of these questions. And the fact is that these constitutional provisions have been observed and I intend now to prove it through a qualified and competent witness, if his Honor permits me, because the sole purpose for offering this man was to show that records of payment showing good standing were kept at the local level. But I am going to show that these provisions were complied with and the names were sent in to the General Secretary-Treasurer, as the constitution provides. I object to your asking him about this because he doesn't know.

Q (By Mr. O'Donoghue) Did you go also into this section of the constitution, Section 13, local secretary-treasurer shall send to the General Secretary-Treasurer a revised list quarterly of the names and addresses of all members in good standing in the local union?

A No, Mr. O'Donoghue, I did not.

Q You weren't interested in the reports flowing from the local union to the International, were you?

A Yes, I was interested in that.

Q Why didn't you go into that and see what matters came from the local union to the International?

A Mr. O'Donoghue, that is all part of an overall system which was requiring years to install. And it has taken us four years to get 71 per cent of the membership under this system. And that is a part of it all. I anticipate being actively engaged, and hope I will be, for a number of years to come yet. Because any system as vast as this, and I have installed many, but this is the largest one that I have ever personally undertaken. It has taken months of travel and everything.

Q You had one meeting with Price-Waterhouse, I believe, didn't you?

A That is right; I did.

Q And you demonstrated this machine?

A That is right.

Q Now, on the night of September 16, the Board of Monitors were taken into a back room and you demonstrated this machine to the Board of Monitors, didn't you?

A That is right.

Q That is the first time you have discussed, exhibited that machine to the Board of Monitors?

A That is right.

Q Or discussed it with the Board of Monitors?

A That is right.

Q The Board of Monitors made no suggestion to you or your company with respect to what modifications, additions or else they would want to make to this particular system, have they?

A No, the only one, Mr. O'Donoghue, I believe I called this reporting form to your attention, you expressed a desire to get together with myself and the Price-Waterhouse.

Q And I told you that we would be happy to meet with you and sit down and try to go over this entire system, didn't we?

A That is right.

Q Now, how many local unions have this particular type of machine here?

A Approximately 450.

Q Have this machine here?

A Yes.

Q This particular type?

A That is right.

Q What about the 450 local unions?

A They have no machine.

Q So you have about one half of the local unions with these machines?

A Well, it's one half in number, yes; 71 per cent of the total membership.

BY MR. SCHMIDT:

* * * * *

Q (By Mr. Schmidt) I believe you explained fully the fact of this receipt?

A That is right.

Q I wish you would explain to his Honor the reason for the entries on the reverse side of the receipt?

A Well, the entries on the reverse side of the receipt -- there are no entries. There are merely information on the reverse side. The receipt reads as follows:

THE COURT: Go ahead.

A If dues are paid to agent in the field or mailed, the member should write his name on the following lines and submit this perforated stub with the payment.

There is then a line for his name.

Many of the members in distant communities mail their payments in. So to assure a proper crediting they mail in a portion of this receipt. In addition, it says: Dues are payable in advance on or before the first day of each month. Spaces below may be used as a temporary receipt in the event dues are paid to an agent or steward away from the office.

It then shows the date the payment has been received by the steward, the amount, and the steward's initials or name.

It then has a notation: Request a withdrawal card when leaving the craft. Notify at once any change of address.

Q Now, none of this information that would be entered on the reverse side would ever find its way on the tape; isn't that correct?

A That is correct.

Q You referred to the ledger number. Would you please explain whether the ledger number appears on each receipt?

A The ledger number does appear on each receipt. As you have a sample before you, in the third box.

Q And are the ledger numbers serialized over the whole group of locals, or does each local have its own set serial or sequence of ledger numbers?

A Each local has its own set serial of ledger numbers, sequence.

Q So that one person belonging to 108, as another belonging to Local 228?

A He could have the same ledger number.

BY MR. O'DONOGHUE:

Q There is no control at the International over these ledger numbers in locals?

A No.

* * * * *

Testimony of William T. Mullenholz
(Re-called)

WILLIAM THOMAS MULLENHOLZ

resumed the stand, having been previously duly sworn, and was examined and further testified as follows:

DIRECT EXAMINATION BY MR. WILLIAMS:

Q Mr. Mullenholz, you have been sworn.

Would you tell the Court, Mr. Mullenholz, whether or not names of members in locals who have been dropped are sent in to the General Secretary-Treasurer's office as a standard practice from the locals throughout the country?

A At the behest of the General Secretary-Treasurer they are sent in to the International, but rather to the magazine department, to the Ransdell Printing Company, monthly.

* * * * *

CROSS-EXAMINATION BY MR. SCHMIDT:

Q If it is true, as you testified, Mr. Mullenholz, that the Ransdell Publishing Company, or Printing Company, gets all this material, is it correct to say that the Teamster magazine is sent to every Teamster member in the country?

A It is not sent to every Teamster member, because it is not possible in the magazine mailing department to keep that mailing up-to-date because of the turn-over in the International Union.

Q What is the discrepancy between the actual number of members and the number of magazines sent out?

A Oh, roughly, I'd say about 10 per cent; 5 to 10 per cent.

MR. SCHMIDT: That is all.

REDIRECT EXAMINATION BY MR. WILLIAMS:

Q What is the turn-over now, Mr. Mullenholz?

A Based on the figures that were given to me for the month of September, there were approximately 40,000 names dropped from the mailing list. There were approximately -- There were an excess of 30,000 names added, and approximately 1200 changes of address.

Q What is the turn-over in the course of a year?

A In the course of a year, based on that -- members that are dropped and who are added to the mailing list? This is a very rough guess, because I am not familiar with all of the figures. But, basing it on that one month alone, why, it would be, oh, I'd say possibly 500,000 changes a year.

* * * * *

MR. WILLIAMS: I was about to prove this morning through Mr. Mullenholz that accounting procedures of the subordinate bodies had been reviewed and are being reviewed pursuant to this decree by the General Secretary-Treasurer's office in conjunction with Mr. McGinley.

MR. O'DONOGHUE: With Mr. McGinley, not with Price-Waterhouse. I didn't stipulate to that. I don't see the relevancy of it. If you offered it, I don't see the relevancy of the fact that Mr. Mullenholz for the past ten months had been working with Mr. McGinley on setting up or establishing auditing procedures with McGinley and Company, their certified auditor. If he says they have, then I will accept it. But we have not as a Board of Monitors completed with Price-Waterhouse our study of local union auditing procedures to make any recommendation.

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TRANSCRIPT OF PROCEEDINGS

November 12, 1958

Testimony of Jesse L. Carr

JESSE L. CARR, SWORN

DIRECT EXAMINATION BY MR. WILLIAMS:

Q Will you state your full name, please, Mr. Carr.

A Jesse L. Carr.

* * * * * * * *

Q What is your occupation at the present time?

A I am secretary-treasurer of the Teamster's Local 959.

* * * * * * * *

Q How long have you been an officer or agent of the Teamsters in Alaska?

A Approximately six years.

* * * * * * * *

Q Now, how many members were there in 959 prior to this year?

A Between 1500 and 2,000.

* * * * * * * *

Q Where was 183 located?

A In Fairbanks, Alaska.

Q How far north of Anchorage is Fairbanks?

A Approximately 439 miles by road and 300 by air.

Q Now, how many members were there in 1957 in the Fairbanks local, 183?

A Approximately 550.

Q Now, how many members were there in the Kodiak local?

A I think there were 70, 75.

Q What is the number of the Kodiak local?

A Local 500.

Q And how far from Anchorage is the Kodiak local situated?

A Approximately 300 miles.

Q So that there were something in the neighborhood of 2,000 to 2,500 members in the whole Territory of Alaska in '57?

A Yes, sir.

Q Now, what was the status of these locals? Were they autonomies or trusteed?

A They were under trusteeship.

Q Is that true of all three?

A Yes, sir.

Q Who was the trustee of these locals?

A Fred Verschuern, Jr., in Seattle.

Q Who was his agent in Alaska?

A I was.

* * * * * * * *

Q Now, prior to 1958, Local 183 was servicing the whole northern half of the Territory of Alaska, is that correct?

A Yes, sir.

* * * * * * * *

Q (By Mr. Williams) When was the subject of merger of 959 and 183 first raised?

A Well, since I have been in Alaska, it has been over a period of the last six years I have been there.

* * * * * * * *

Q When was your meeting held in Anchorage?

A On December 6.

Q How large was the attendance at that local?

A We had the largest attendance that we ever had.

THE COURT: That was not the question. Tell him.

A Four hundred seventy-five.

Q Was the question of merger voted at that meeting?

A It certainly was.

Q And what was the vote?

A Four hundred seventy-five to nothing, unanimous.

Q Now, with respect to 183, Mr. Carr, were you present at the meeting at which the merger question was voted upon?

A In 183?

Q Yes.

A Yes, sir.

Q You recall on which night that meeting was held?

A I believe it was December 12.

Q How many members were present at the meeting on December 12 of 183?

A One hundred thirty-one.

Q Was the question of merger voted on that night?

A Yes, sir.

Q What was the vote?

* * * * * * * *

THE COURT: Mr. Williams, you read it out for the record.

MR. WILLIAMS: What page did you have it there?

MR. O'DONOGHUE: The third page, about the fourth paragraph from the top. It's the second.

MR. WILLIAMS: The vote was called for; 114 in favor, 12 against, 5 not voting as the 5 new members did not understand what it was about.

THE COURT: You will agree to that, Mr. O'Donoghue?

MR. O'DONOGHUE: Yes, I do.

* * * * * * * *

Q (By Mr. Williams) Mr. Carr, are you familiar from your own knowledge as to what notification was given to the membership of 183 concerning the meeting and the question which was to be discussed?

A Yes, sir, I am.

Q Would you tell the Court what notice was given and whether or not they were advised that this question was going to be discussed.

* * * * * * * *

A The notice by the regular notice of posting the notices to the different companies and also by a news broadcast, which I think you will have a letter there that bears it out, for three days over -- I think it was station KTVA, in Fairbanks. I think it was three days prior to the meeting pf December 12.

Q What was the notice that was given to the best of you --

MR. O'DONOGHUE: Does he have copies of it?

THE COURT: Show it to Mr. O'Donoghue. Perhaps we can agree on it.

THE CLERK: Defendant's No. 70.

MR. SCHMIDT: No objection.

MR. WILLIAMS: I offer No. 70, your Honor.

THE COURT: You state it.

MR. WILLIAMS: Attention. Attention. Attention. It's Local No. 183. December 9, 1957.

All members are urged to attend a special meeting at Carpenters Hall, December 12, 1957, at 8:00 p.m., to discuss local autonomy, proposed merger of Local 183 and Local 959, and the election of officers. All members are urged to attend. This is a very important meeting.

Robert J. Dixon.

Q Now, you say that notice was given over the radio?

A Yes, over, I believe it was television.

Q What is the television station there? KTVF?

A Yes, sir, that is it.

* * * * * * * *

BY MR. WILLIAMS:

Q While Mr. Schmidt is looking at that, Mr. Carr, I want to ask you, at the 183 meeting on December 12, were the questions of autonomy and the questions of merger presented separately or were they presented together to the membership?

MR. O'DONOGHUE: The minutes are the best evidence of that, may it please the Court.

MR. WILLIAMS: The minutes are not the best evidence. The man who was there is the best evidence of it, I think.

THE COURT: If he was there, he may testify.

THE WITNESS: They were presented to the membership separately.

BY MR. WILLIAMS:

Q Which one was presented first?

A Merger.

Q It was after merger was voted that autonomy was voted?

A No, sir. I think that they were voted together. I might be wrong. I think that the both items were voted on at the same time. However, they were discussed separately.

Q Oh, I see.

* * * * * * * *

CROSS EXAMINATION

BY MR. O'DONOGHUE:

* * * * * * * *

Q Now, Local 183 in Fairbanks was chartered about ten years ago; was it not?

A I believe it was in 1947. I am not too sure of that.

Q And about two years after being chartered, it was put under trusteeship in about 1949?

A I am not sure of the dates, Mr. O'Donoghue.

Q Well, just your best recollection. It has been under trusteeship, Local 183 in Fairbanks, for about eight years; hasn't it?

A Yes, sir.

Q When did you become a member of the Teamsters, what year?

A December 2, 1946.

Q And when were you sent over into Alaska?

A I wasn't sent there. I went up as a regular member of the Teamsters Union.

Q As a member of Local 959 of Anchorage?

A Yes, sir.

Q When were you appointed secretary-treasurer?

A Approximately a year ago.

Q Did you attend meetings of Local 183 within the last year?

A Yes, sir.

Q Were you at the January meeting of 1957?

MR. WILLIAMS: Fifty-seven?

BY MR. O'DONOGHUE:

Q January 1957.

A To be real truthful, I couldn't say.

Q Well, let's go back through the year 1957, from January through December the 12th. What local union meetings over those twelve months of 183 did you attend?

A During the period of 1957?

Q Yes.

A I would say three or four.

Q Can you give us the months, please, for the three or four?

A No, sir, I couldn't.

Q Now, I noticed you stated to Mr. Williams on direct examination that there had been much discussion about a merger among the members of the Local before the vote of December 12, 1957.

A Yes, sir.

Q Am I right?

A Yes, sir.

Q At any of these three local union meetings, was the question of merger discussed?

A Yes, sir.

Q On the floor?

A Yes, sir.

Q Did you bring the minutes of the meetings with you?

A No, sir, not all of them.

Q Don't you think that was a very important matter to have here?

A Well, no, sir, I do --

MR. WILLIAMS: Your Honor, if counsel wanted those minutes, he knew how to get them through the processes of this Court; or all he had to do was ask for them. I don't see what relevancy something that happened back in '57 has to what we are discussing here, which is the notice on the merger meeting of December 12.

THE COURT: Gentlemen, the witness has answered, no. You may proceed.

MR. O'DONOGHUE: All right.

BY MR. O'DONOGHUE:

Q Now, don't you think, as a local union official -- rather, an International union official, because you were representing the trustee of the International, with respect to both Local 183 and Local 959 -- that there should have been a vote of the local union authorizing a merger before you submitted it to the International?

A No, sir. In this respect, if I might explain.

Q Yes, surely, go right ahead.

A During our discussion with Frank Brewster in Seattle regarding the autonomy of Local 959, it was discussed that if 183 in Fairbanks didn't agree to the merger, that Local 959 in Anchorage would go on their own, because we had a better chance of gaining local autonomy than Local 183.

Q Now, I want to ask you, getting to this question of the discussion of merger, can you tell me one local union meeting of 183 during the year 1957, to your recollection, what month, it was discussed on the floor?

A During 1957?

Q Yes.

A I couldn't give you the month, Mr. O'Donoghue.

Q Now, let's get to this question. You just testified that you had a meeting with Brewster.

A Yes, sir.

Q In Seattle.

A Yes, sir.

Q When was that meeting?

A That was in the latter part of November.

Q Had you been authorized by Local 183, by the vote of the members, to discuss with Brewster a question of merger with Local 159?

A Of 959?

Q Yes.

A No, sir.

Q You took it upon yourself to discuss this with Mr. Brewster; didn't you?

A Yes, sir.

Q Now, when you made this report to the International, dated December 6, 1957 -- that document that Mr. Williams just showed you --

MR. O'DONOGHUE: May I have it, please?

MR. SCHMIDT: This one?

MR. O'DONOGHUE: Yes.

BY MR. O'DONOGHUE:

Q -- you didn't state in that document to Mr. Beck that there had been any vote of approval of both local unions relative to a merger; did you?

A No, sir, I didn't.

Q Now, you said you discussed this with the members. Where would you discuss it with the members of 183?

A On several occasions, I went up during the week, when they have had trouble, or during the month, without attending a regular meeting, that I have had members approach me, and also in the Anchorage area, where the Fairbanks members journeyed looking for work, numerous occasions.

Q Now, Mr. Carr, let's get to this question of posting notices just for a minute. Did you post any notices at any particular place about this meeting of December 12?

A In Fairbanks?

4/15/59
EMF
2.00

WILBUR K. MILLER

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,983

190

John F. English, Et. Al.

Appellants

vs

John Cunningham, Et. Al.

Appellees

United States Court of Appeals
For the
District of Columbia Circuit

FILED APR 3 1959

Joseph W. Stewart
CLERK

JOINT APPENDIX

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Q Yes, in Fairbanks.

A No, sir, I didn't.

Q Did you go out and see where they were posted?

A No, sir, I didn't.

Q Did you give any directions to Dixon or anyone else to post them?

A Yes, sir, I did.

Q What instructions if any did you give Dixon?

A I told Mr. Dixon and Mr. Leslie, who was the business agent in the Fairbanks area at that time, to post them at the regular places of employment, as we do always at a special meeting.

Q What are the regular places of employment, if you know, in the City of Fairbanks?

A Well, the local companies, such as the Coca Cola plants, the --

Q Fuel plant?

A Fuel, and so forth.

Q You didn't see whether they were posted or not?

A No, sir, I didn't.

Q So of your own personal knowledge, you don't know even whether they were posted?

A No, sir, not the notices.

Q And you couldn't testify as such under oath?

A That I had seen them posted?

Q Right, of your own personal knowledge.

A That is true.

Q The testimony that you can give only is that you gave instructions to Dixon; correct?

A Yes, sir.

Q And did you also give Dixon instruction to see that they were also telecast over the television station, KDTF -- whatever the name of it is?

A No, sir, I didn't. If I might explain this?

Q Yes, surely.

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A Dixon called me and asked -- the reporters -- actually, this was a hot issue in the Fairbanks area, and the reporters were bothering him. He asked me if he was to give them a statement; and they did; and I understand they ran it for three days or three nights.

Q You told him, all right, to give it to the television station, so that they could telecast it?

A Yes, sir.

Q You didn't hear that?

A No, sir, I didn't. I wasn't in Fairbanks.

Q But the only direct notice that you gave Mr. Dixon about the calling of this special meeting of December 12 was the specific instruction that he was to post it on all the boards of the employers where the men were employed in the Fairbanks area?

A Yes, sir.

Q That was the only direction you gave?

A No, sir, there were other things. The News Miner Newspaper in the Fairbanks area, who has been adverse to the Teamsters Union in that territory for a long time, and I told him to limit the amount of advertising that he was to give the Fairbanks News Miner.

Q Oh, you did tell him, then, to also advertise it in the paper?

A Yes, sir.

Q What instructions did you give him as to that?

A I didn't. I just told him to limit the amount of space that he would give the paper.

Q So you told him two things: You told him to post the notices at the employers' places, and then also to put a notice in the Daily News Miner; is that right?

A Yes, sir.

Q And to put it in for three days; right?

A I don't know if it was three days.

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Q Well, you told him to put it in?

A Yes, sir.

Q Now, I hand you a copy of the Daily News Miner for Fairbanks, Alaska, Wednesday, December 11, 1957. Is that the notice?

And it reads as follows:

"Notice. Special Meeting, Teamsters Local No. 183, Thursday, December 12, 1957, 8:30 p.m., Carpenters' Hall, 315 Fifth Avenue. Very important. All members attend."

Right?

A Yes, sir.

Q That is what was published in the Daily News Miner; isn't it?

MR. SCHMIDT: What is the answer to that question?

BY MR. O'DONOGHUE:

Q That is what was published in the Daily News Miner?

A Yes, sir, it is.

Q Nothing there about merger; is there?

A No, sir.

Q Nothing there about election of officers; is there?

A No, sir.

Q Nothing there about local autonomy, is there?

A No, sir.

Q Nothing there about consolidation with Anchorage Local 959?

A No, sir.

MR. WILLIAMS: Are you putting this in?

MR. O'DONOGHUE: We will offer that as Monitors' Exhibit No. 77.

THE CLERK: No. 77.

THE COURT: Monitors' Exhibit 77 will be received.

* * * * * * * *

BY MR. O'DONOGHUE:

Q Don't you think it would have been proper and fair that you would have had a uniform announcement both in the newspaper and in the telecast?

A Not in that newspaper, sir.

Q Well, everyone reads the newspaper; don't they? The members of your local union would take that newspaper and look at it; wouldn't they?

A Yes, sir, they probably would.

Q There is nothing in this notice in the Daily News Miner, either, about voting on merger; is there?

A No, sir.

Q Or voting on the election of officers?

A No, sir.

Q Or voting for local autonomy?

A No, sir.

Q I notice with respect to this posting on bulletin boards, which you introduced into evidence -- I am going to hand it to you -- that notice doesn't say anything that there is going to be voting at this special meeting on merger with 959; does it?

A Not about voting.

Q Says, discussion; doesn't it?

A Yes, sir.

Q If you were going to take a vote on a merger, don't you think in the notice that you were going to post, that you would specify that there is going to be voting that particular night on merger?

A No, sir, not --

Q You don't think that would comply with the requirements of a special notice for a specially-called meeting for a designated purpose?

A No, sir, I wouldn't in this case, Mr. O'Donoghue.

Q You know, if I read a notice, and I am a member of your Local 183, and it said: Special meeting tonight for discussion of merger with Local 959 of Anchorage -- you think

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that would be fair enought notice for me to feel that there was going to be a vote on that proposition tonight?

A Yes, sir, because there was enough talk about it around town.

Q As long as you had, "discussion," that would cover voting also? The word "discussion" to you would also cover voting, notice that there was going to be a voting on a merger?

A The discussion before the vote, yes.

* * * * * * * *

Q Now, I take it the two things that you gave about notice -- and let's be clear about it -- you gave notice to Dixon and to Talbot that they were to post this notice that I just read to you about a discussion at this special called meeting December 12.

A Dixon --

Q You told them to post that?

A Yes, sir.

Q In the shops in Fairbanks where the men were employes?

A Yes, sir.

Q Then later, there was a call from Dixon to you, and you told him to put it on the telecast; right?

A I didn't tell him to put it on the telecast. I told him to answer the reporter.

Q Did you dictate to Dixon the notice, the words in the notice that was posted, that I just showed you, about discussion of a merger and a discussion of election of local officers and local autonomy? Did you read that to him over the long distance?

A There was discussion about --

THE COURT: You must answer his question.

BY MR. O'DONOGHUE:

Q Did you give him the wording of it and tell him: This is the wording of it, over long distance?

A Not entirely, no.

Q What do you mean, not entirely? Did you tell him some of it?

A Some of it, yes.

Q Tell me how much you told him what to put in?

A I told him this, to be sure that the members had adequate notice, and to put in that we were proposing merger, the election of officers, and so forth. In other words, I wouldn't dictate anything to the man over the telephone.

* * * * * * * *

Q Mr. Carr, the members of Local 183 work in other areas than in the City of Fairbanks; do they not?

A Yes, sir, they do.

Q During the winter months there remains about a membership of 300 out of 183 who reside in the territory, now the forthcoming State of Alaska; isn't that correct?

A Three hundred fifty to four hundred.

Q Now, isn't it true that approximately 200 or more members of Local 183 worked outside of the City of Fairbanks, up on the Dew Line, and in other areas outside of the City of Fairbanks?

A Two hundred?

Q Yes.

A During the month of December?

Q December, yes.

A No, sir.

Q How many would you say worked outside the City of Fairbanks?

A I would say a maximum of 50 or 55 during that period of the year.

* * * * * * * *

Q If you tried these men in November, it was the duty of the local executive board to report to the next meeting of the membership what action they took on those charges?

A They did.

Q Yes, that is what I am saying. This was the next meeting after their trial; isn't that correct?

A Evidently, it was.

* * * * * * * *

Q You know, don't you, Mr. Carr, that the notice that Cserpes, Spevak, Martin and Benson received, the notice of their expulsions, was on the morning of December 12?

A No, sir, I didn't at that time.

* * * * * * * *

Q You read, did you not, the complete history of the trials of these five men and what action had been taken by the local executive board in expelling them?

A Yes, sir. But as far as the complete history of the trials is concerned, I reported the final action that was taken against these men.

* * * * * * * *

Q Did Brother Brewster, when you met him in Seattle, say, O.K., you go on back to Alaska, and I will take this up with Dave Beck and see if we can't put this merger through? Brewster told you that; didn't he?

A If -- with qualifications.

Q Yes. In fact, he said: Now, you go back and you write a letter in to Dave Beck, and tell him all about this merger, how you want it. Didn't he?

A Yes, sir, he did.

Q So you went back and you addressed a letter of December 6, setting forth all the good points about the merger, before you had this meeting of December 12 of Local 183?

A Yes, sir.

Q Right?

A Yes, sir.

Q And you were in charge of Local 183 for Brother Verschuern?

A Yes, sir, I was.

Q Who was the trustee? He was acting as trustee of 183?

A Yes, sir.

Q And you were his agent?

A Yes, sir.

Q Now, was Verschuern also at this meeting with Brewster?

A No, sir, he wasn't.

Q Just you alone?

A Yes, sir. He was out of town.

Q Now, I note that you don't say anywhere in this letter about the merger that it had been approved by a membership meeting of Local 183.

A No, sir, I didn't.

Q You just said:

> "It is respectfully presented..."

You state:

> "5. Local Desire. The brothers of both locals have repeatedly requested local autonomy and desire the consolidation of Local 183 and Local 959."

Right?

A They had.

Q Right?

A Yes, sir.

Q Wouldn't it have been much better to get evidence of the desire of the members of Local 183, that you would take a referendum vote of the entire membership of Local 183?

A Mr. O'Donoghue, if I might elaborate on that just a moment. Our December 6 meeting of the Anchorage local states in the minutes that we would write this letter the next day, and if the 183 didn't come in, then we would go on our own. That so states in our December 6 meeting.

Q You didn't answer my question.

A Would you say it again, sir? I am sorry.

Q I am asking you: In order to have had evidence of the expression of the good will of the members of Local 183, don't you think it would have been much better to have had some secret ballot vote of the entire membership of 183?

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A No, sir, because I knew their feelings.

Q Oh. You never had a vote at any meeting of the Local 183 at any time during the year 1957 relative to whether or not the membership of this local wanted to go into Anchorage, to merge?

A No, sir, we didn't.

Q Don't some of the members of Local 183 work at Point Barrow?

A Yes, sir.

Q Was any notice posted up there?

A No, sir. That is 800 miles away.

Q Well, was any effort made to determine whether the members working at Point Barrow, of Local 183, wanted merger?

A I think their petitions will show that.

Q Prior to the meeting of December 12, was any effort made to notify the men at Point Barrow to come to this meeting about the merger?

A No, sir, it wasn't.

Q Was any effort made to get the men working at Barter Island?

A No, sir; that is quite a ways away, too.

Q Nome is quite a ways away, too; isn't it?

A Yes, sir.

Q And men of Local 183 were working there; weren't they?

A Yes, sir.

Q Men were also working at Haycock; weren't they?

A Very few.

Q A few. Still, they had a right to vote; didn't they?

A Yes, sir.

Q Was any effort made to give notice to them?

A No, sir.

Q Was any effort made to give any notice to the men at Galena and to post it?

A At Galena, I wouldn't want to answer that. There might have been. That is closer in.

Q Any effort made to post it at Tannana?

A At Tannana?

Q Tannana, where the men were working.

A I couldn't testify to that, sir.

Q Now, you just testified, in answer to Mr. Williams' question, that the matters of merger and local autonomy were submitted to the members in one package by one vote, by one motion.

A Yes, sir.

Q The minutes so reflect that; don't they?

A I believe they do, yes, sir.

Q I think it is on the top of Page 2, and reads as follows:

> "Brother Bob Talbot made the motion which was seconded by Brother Poorman as follows:
>
> "I move that Local 183 Fairbanks and Local 959 Anchorage be consolidated into one local to be known as Local 959 for the best interests of all members concerned, and that we be given immediate autonomy."

That was put up; wasn't it?

A Yes, sir.

Q Turn to the first page.

Now, with respect to your explaining this, the minutes reflect, do they not, that you stated:

> "Brother Carr explained that we could...
> ...explains further that after the meeting of Local 959 Anchorage, he had written a letter to President Beck, asking for the consolidation of both locals. If the membership of Local 183 votes to consolidate, President Beck will probably order the election and merger at a later date. If he denies the merger, then the election of

officers will take place at each local separately. Actually what we are doing is electing officers and merging with the hope that autonomy will be granted. Brother Carr asked if there was any further questions on this matter."

That happened; didn't it?

A Yes, sir.

Q Now, do you recall when this general executive board sent a panel out to Anchorage sometime in August? It was Mocks, Devinty and Grouder. Remember?

A Yes, sir.

Q Remember when these three International representatives came to the meeting of Local 183 that night, when you had your membership meeting?

A Yes, I do.

Q A member got up by the name of Brother Bottles. Do you remember him? Brother Bottles. Haven't you got a member by that name in Local 183?

A I believe we have.

Q He said:

"I seconded that motion about consolidating with 959, and I thought we were going to get local autonomy back here in 183."

Do you remember him saying that to Vice President Martin? At that meeting in August.

A I couldn't testify it was Brother Bottles.

Q In fact, two or three members got up and said it?

A No, sir.

Q How many did?

A There was just one person.

Q Who was it?

A I don't know. I don't know if it was Bottles or if I have him mixed up with someone else.

Q He said:

"I thought when I made the motion we were getting local autonomy back, not that we were merging."

A No, sir; he didn't say that.

Q What did he say? What is your best recollection?

A He said he thought it was the best way to get out from under trusteeship, by merging. That was the words he used.

Q And getting the local autonomy back?

A At a later date, which we told them they could at a later date.

Q The name is Poorman, isn't it? Brother Poorman?

A That sounds --

Q And another man to the right of Brother Poorman got up and said the members were all confused, they thought they were going to get local autonomy back and not be merged with Local 959 when the motion was made.

A Not to my knowledge, Mr. O'Donoghue.

Q Now, you voted for election of officers that night, too; didn't you?

A Yes, sir.

Q And by a single ballot, you got up and you said: Now, look, if you fellows want to get this local autonomy back, you got to have a merger with 959, and you got to put back into office the same officers that you had before.

Didn't you say that?

A That is not true.

Q Isn't that what happened?

A No, sir.

Q Didn't you suggest that if there were no more nominations, then all those officers who were in would go in?

A No, sir. The motion was made, seconded and closed.

Q Motion made, seconded and closed that all those officers who were in would stay in office?

A Yes, during the period of probably fifteen or twenty minutes of discussion.

Q And that is what occurred?

A Yes, sir.

Q No opposition?

A No, sir, there wasn't.

Q And, of course, you had read off the expulsion of the five men who had sent a telegram contesting the eligibility of the delegate to the convention?

A Oh, yes, sir.

Q You started the meeting off with that?

A No, sir, I didn't start it off with that.

Q It did start off with this, didn't it"

Brother Kough got up and said: Can you dissolve this local by a vote?

A No, sir, that was later on.

Q Look at the first page of the minutes. What does it say? Read it.

A From the opening?

Q Yes.

A "The meeting called to order by
Brother Dixon, Chairman, for the purpose
of discussing local autonomy and consolida-
tion of Fairbanks and Anchorage locals
into one, also the election of officers."

Q What is the first thing at the top minute entry?

A "Brother Kough asked if we can dissolve this local."

Q Right. He asked that; didn't he?

A Yes.

Q By vote. What was your answer?

A My answer was this: That we weren't dissolving; we were merging.

Q He told you it was the same thing; didn't he?

A Not to my knowledge. Now, he might have.

Q You told him you could dissolve or merge the local by vote?

A I said we could merge and consolidate.

Q Yes.

* * * * * * * *

Q What was the financial situation of Local 183 at that time? How much did it have in the way of assets and cash on hand?

A I believe it had approximately $20,000, and about $15,000 worth of bills that hadn't been paid during this transition period of my taking over.

* * * * * * * *

Q And what was the financial condition of Local 959 at that time?

A During our merger?

Q During the same time that this union had $20,000 in cash and $15,000 in --

A Approximately $52,000.

TRANSCRIPT OF PROCEEDINGS

November 12, 1958

Testimony of Robert J. Dixon

ROBERT J. DIXON

was called as a witness by and on behalf of the Defendants and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Will you state your full name, please, Mr. Dixon?

A Robert J. Dixon, D-i-x-o-n.

* * * * * * * *

Q What is your occupation at the present time?

A President and business agent for Teamsters Local 959.

* * * * * * * *

Q Did you hold a meeting on the 12th of December of 1957?

A Yes, we did.

Q How large was your membership at that time, Mr. Dixon?

A The membership? Oh, approximately 500, right around 500, I would say.

Q Of what was your membership composed?

* * * * * * * *

Q Is it an accurate statement that 183 covered the northern half of Alaska jurisdictionally?

A That is right, sir.

* * * * * * * *

Q At the time of December 1947.

A Very few at that time of the year. That is the time of the year that the majority of the construction jobs are shut down.

* * * * * * * *

Q What media did you employ to give your members notice?

A Well, we posted notices at various town, city jobs, around wherever we had men employed in the city; and we used radio news to advertise; we used the TV news for advertising, and once in a while the Daily News Miner. If it was an important meeting, we would use that.

* * * * * * * *

THE WITNESS: If it was an important meeting, we would use the Daily News Miner.

MR. O'DONOGHUE: Important, you would use the newspaper, yes.

THE WITNESS: The News Miner.

* * * * * * * *

A We used the Daily News Miner, the radio station, and the television station, and also notices that were put up on our bulletin board at the hall, on the door at the hall, out at the various job sites in the city, and around the city there wherever we had men working on city contracts.

* * * * * * * *

Q Now, what was the substance of the message that was broadcast and telecast over the air with respect to the December 12 meeting?

A Did you want me to read this one right here?

Q If that is what it was, yes.

A Yes.

"Here is a very important notice to all members of the local Teamsters organization. Next Thursday evening, December 12, 1957, there will be an important meeting at the Teamsters Hall on Fifth Avenue for the special consideration of local autonomy and consolidation of Locals 183 and 959. It is extremely important that all members of the Teamsters local be on hand for this very important meeting. Time again, next Thursday evening at 8:00 p.m., December 12, 1957; and the place, the Teamsters Hall on Fifth Avenue."

* * * * * * * *

CROSS EXAMINATION

BY MR. O'DONOGHUE:

Q Mr. Dixon, I take it you became a business agent of Local 183 sometime in 1949?

A September 1, I believe it was.

Q Was it in trusteeship then?

A It was.

Q And you were appointed a business agent by whom?

A By George Sees.

Q Who was George Sees, a former trustee?

A The first trustee that was appointed of that local.

Q You have served as business agent continuously through that time until the night of December 12, 1957?

A Right, sir.

Q When you were elected president?

A Right.

Q Of the merged Locals 959 and 183?

A (Witness nods assent.)

Q During this period of time in 1949, factually, the local union held regular meetings every month; didn't it?

A No. I would say during the winter months, sir, that quite often we would -- the membership would not not to hold them during the winter months due to the severe cold.

Q December, January and February?

A Especially those months, yes. Sometimes that would include November.

Q Right. However, during the other open months, you had regular monthly meetings, didn't you, the membership?

A Yes, sir.

Q You kep minutes?

A Right.

Q You had an office where the members of Local 183 paid dues?

A Right.

Q You had a business agent and two assistants; didn't you, most of the time, assistant business agents?

A Not most of the time.

Q Were there two business agents?

A One assistant. Myself and one assistant most of the time.

Q You negotiated contracts?

A Right.

Q Your performed all the features and duties of a labor organization; didn't you?

A Right.

Q Did you secure certifications from the National Labor Relations Board?

A Yes.

Q Now, let's just direct our attention to this meeting of December 12, 1957. I take it Mr. Carr called you by telephone; didn't he?

A Yes, he did.

Q And told you to get a notice and have a notice posted?

A (Witness nods assent)

Q Tell the Court exactly what Mr. Carr said to you over the telephone about this notice of a special meeting the night of December 12?

A Well, he asked me to get a notice out, and get it posted out where everybody could see it in the various areas; be sure and get a notice out, and as soon as possible; and which I did.

Q What did he tell you the notice should contain?

A I don't recall right offhand what he did, if he did. He could have. I don't recall right offhand.

Q Did he tell you what the notice was to contain, certain words that you posted?

A It is difficult for me to remember that. He could have, and yet I don't remember. I would rather say, I don't recall just offhand what he did say. He did mention the fact to get them out.

Q I hand you this which is Defendants' Exhibit No. 70. This is the notice that was posted; wasn't it? This is the language?

A I believe this is the one.

Q Didn't he tell you to post a notice in which you were to say, "discuss local autonomy"? Did he use those words?

A Well, I don't think that he instructed me to do it, because to be very frank with you --

THE COURT: Keep your voice up.

THE WITNESS: I beg your pardon?

THE COURT: Keep your voice up.

THE WITNESS: I don't believe he instructed me to put any certain wording in there. I think his man subject was to post a notice, make sure that I post a notice.

THE COURT: No, just answer his question.

BY MR. O'DONOGHUE:

Q Did he discuss with you to post a notice and put in the notice, "discuss local autonomy"?

A I don't recall. I really don't remember.

Q Didn't he discuss with you over the telephone:

"I want you, Mr. Dixon, to post a notice, to call this special meeting December 12, to discuss local autonomy, the proposed merger of Local 959 and 183."

Did he say that?

A I believe his words were that, be sure you get notices out; and I just forget, to be exact, how it was. I would be guessing if I told you exactly what he said, because it is too long ago to recall just exactly what he said on it.

THE COURT: If you can't answer the question, say so.

THE WITNESS: I don't believe I could answer it.

BY MR. O'DONOGHUE:

Q You can't answer the question?

A I just don't remember.

Q You don't know what he told you over the telephone?

A I don't recall.

Q You don't know where you got these words to put on this notice?

A That was my own. I gave those instructions to my office secretary.

Q You dictated this to your secretary?

A Right.

Q So you knew there was going to be a discussion of local autonomy; didn't you?

A Right.

Q And that is what you were going to discuss that night; right?

A Right, and also election of officers.

Q Also, you were going to discuss the proposed merger of Local 959 and Local 183?

A Right.

THE COURT: Keep your voice up.

THE WITNESS: Yes.

BY MR. O'DONOGHUE:

Q And also discuss the election of officers?

A Right.

Q Now, did you go out and post these yourself?

A Some of them.

Q Where did you post some of them?

A I posted some at the, I believe at the cab companies, Northern Commercial.

Q How many did you post at the cab companies, one?

A No; there was three cab companies; posted at the cab companies.

Q Did you post them at each of the three cab companies?

A Yes, I did.

Q Where else did you post it?

A Northern Commercial, and I believe at the Food Land Store and Thrifty Market.

Q Swifty's Market and the Food Land Store.

A Thrifty Market.

Q Thrifty Market, and the three cab companies.

A I believe that is right.

Q That is where you posted it?

A Yes.

Q Those are the only ones that you know that were posted?

A No, there was more. The other business agent that worked with me.

Q Did you go out with him while he posted them?

A No, I did not.

Q You don't know what he posted; do you?

A No, actually, I don't, but I assume he posted the same thing.

Q What else did Mr. Dixon -- besides giving you instructions to post where the men work in Fairbanks, what other instructions did he give you about posting or giving notice of this special meeting?

A Mr. Dixon, you said.

Q I mean, Mr. Carr to you. What else did he say to you over the phone?

A He told me to put it in the paper, the radio stations, and advertise it, post notices, and everything else, and get those notices out as soon as possible. That was mostly the discussion on it.

Q Now, this was the notice that you dictated to your girl to post?

A Right.

Q And you also dictated the notice that went in the Daily News Miner paper up there in Fairbanks; didn't you?

A That was called in over the telephone.

Q Did you call it in?

A I believe the girl called that in.

Q Did you give it to the girl to call in?

A Yes.

Q You dictated this notice that is in the paper?

A Well, I might add that --

THE COURT: No.

BY MR. O'DONOGHUE:

Q Did you? Did you dictate that notice?

A Yes, I did.

Q Why didn't you put the same notice here that there was going to be a discussion of local autonomy, proposed merger of Local 183 and Local 959, and the election of officers, the purpose of the meeting? Why didn't you put that in the paper the same as you posted?

A Well, in this paper here, labor don't use it as an advertisement, because they are opposed to organized labor and there is no way organized labor uses this paper for advertising. So --

Q Mr. Dixon --

MR. WILLIAMS: Let him finish.

MR. O'DONOGHUE: All right.

THE WITNESS: I did make the statement that I didn't want to put a big ad in there. I just wanted a small ad put in that paper, to the girl. I wanted a small ad. I said, call in and put it in there.

BY MR. O'DONOGHUE:

Q And you dictated this to her?

A That is right.

Q There is also another ad about a Christmas party, the same size, isn't there?

A Same size, right.

Q You told what the Christmas party was going to be in the next ad; didn't you?

A Right.

Q But you didn't put in here the purpose for which you were calling this meeting; did you?

A No.

Q Did you testify on direct, when there was anything important, you always put it in the newspaper, the Daily Miner?

A Real important, yes.

Q Don't you think the merger was real important?

A We put a notice in there. Just put the notice in the newspaper.

Q Why didn't you put in there there was going to be a vote on a merger?

A As I say, we didn't want to use any more space than we had to in that News Miner. We never do use it. Very seldom.

Q In fact, in this notice, you didn't even say there was going to be a vote; did you? The notice that you posted. You merely said that there was going to be a discussion of local autonomy and of merger of Local 959 and Local 183.

A That is what this notice says, yes.

Q Doesn't say anything about voting for merger; does it?

A No, it does not.

Q Doesn't say anything about voting for election of officers, does it?

A Just says discussion.

Q Just says discussion and discussion of local autonomy?

A To discuss.

Q Yes. Where did you get this, Defendants' Exhibit 71?

A This came from the KTVF Channel 11 TV Station.

Q Did the man give that to you?

A He gave it to the other representatives that works with me.

Q Did you give him the substance of that message? Did you, Mr. Dixon, give that to the station editor in Fairbanks, the substance of that message?

A I believe the girl gave this to him.

Q You didn't?

A I don't recall. I could have, and yet, I don't remember right now.

Q How many men work the year around in the City of Fairbanks?

A Oh, about 150, 200, somewheres around there.

Q And you have an over-all membership of about 500?

A Right.

Q So the other 350 work outside the City of Fairbanks on construction, as you call it?

A Yes, on construction.

Q Now, let's take around December 12, how many men from Local 183 were working, if you know, at Point Barrow?

A Fifty-seven? There wasn't over about 24, 25.

* * * * *

Q Now, with respect to these petitions, I might ask you, it is true that all men are hired through your office or are employed directly through your office; aren't they?

A No. Some are hired off the street and put on the job.

Q But generally, as a general rule, the call comes in to you, and you dispatch the men to the jobs?

A Right.

Q So you operate a hiring hall out of your local; don't you?

A Yes, sir.

Q Now, isn't it true with respect to this petition that is here, that that petition was in your office all summer long and as the men came in and were dispatched to a job, you handed it to them and asked them to sign it?

A That is not true, sir.

Q Didn't you have men who came in and were called in and were waiting in the hall that this was handed to them for signature?

A I might add that those petitions were signed in a period of about a week or ten days; all of those petitions, signatures were on there in that period of time.

Q I am asking you again, Mr. Dixon, is it not true that these petitions here that I hold in my hand were in your office where the men come to get dispatched for jobs?

A They were there.

Q And didn't you hand it to various men as they come up and put their names on the out-of-work list?

A I did, but only in a period of a week's time or ten days at the most.

Q Well, in the period of a week's time or ten days?

A That is right.

Q You kept it there and when the men come in for work, you asked them to sign it?

A Right.

Q How many signed it?

A There was some — around 380-something, I believe.

MR. O'DONOGHUE: No more questions.

* * * * *

TRANSCRIPT OF PROCEEDINGS

November 13, 1958

Statement of Martin F. O'Donoghue

I just have a telegram here, a thermofax copy of a telegram that President Hoffa sent to Otto Frobe, the secretary-treasurer of Teamsters Local 100, Cincinnati, which is a part of the record of this second amended petition on the question of construction on this check-off. I offer it as Monotirs' Exhibit No. 77.

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I will just read it. The International Union has received from the Board of Monitors a copy of your letter dated October 23rd, 1958. The International Union cannot agree to the 90-day grace period since such a period is not consistent with the 1957 International Constitution. Inasmuch as nominations are scheduled for tomorrow, November 4th, it is suggested that if there is any doubt concerning the eligibility of an individual member that that member be ruled eligible subject to a final ruling by this office within the next 15 days. The ruling will be made on an individual basis after determination of the member's good standing for the past 24 months.

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MR. WILLIAMS: I will address myself, your Honor, only to those things which Mr. Schmidt concedes took place, so that there is no factual dispute here.

Your Honor, there is a company in New York called Producers Distributors Associates, or P.D.A. P.D.A. is a client of Mr. Schmidt's office. During 1958 a grievance arose between P.D.A. and Local 816 of the Teamsters Union, and it was necessary that a formal arbitration hearing be held before the New York Trucking Authority. There were two sessions of that arbitration. In one of those Mr. Schmidt himself appeared and represented the employer against 816. In the other his associate, Mr. Lawrence Smith, who is a lawyer, who is salaried, on Mr. Schmidt's payroll, appeared and represented the employer.

Now, there were several conferences, two or three, Mr. Schmidt says, between Mr. Schmidt himself and the secretary-treasurer of Local 816, one Lester Cornell, regarding this matter.

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Now, in addition to the Producers Distributors Associates, the record shows, if the Court please, that Mr. Schmidt also represented Howard Johnson Restaurants, and Mr. Schmidt began negotiations looking toward a contract with the Teamsters Union in New York representing Howard Johnson's restaurants. That contract was never consummated. But a petition to decertify the Teamsters as the representatives for this bargaining unit of Howard Johnsons was filed before the National Labor Relations Board and the record shows that on May 16, 1958, Mr. Lawrence Smith -- and I want to offer this.

MR. SCHMIDT: No objection.

MR. WILLIAMS: Mr. Lawrence Smith of the offices of Godfrey Schmidt appeared before the National Relations Board representing Howard Johnsons and asked the National Labor Relations Board to decertify the Teamsters as the collective bargaining representative of the workers of Howard Johnsons Restaurant.

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MR. WILLIAMS: Now, previously Mr. Schmidt himself had entered into contractual negotiations with the Teamsters acting on behalf of Howard Johnsons but, as I say, they did not reach negotiation because a petition for decertification was filed and subsequently Mr. Smith of Mr. Schmidt's office appeared and represented the employer in that regard.

Now, your Honor, again, Mr. Schmidt represents in New York Schraffts, the restaurant chain, and Mr. Schmidt has testified that contract negotiations, wages, hours, working conditions covering those subjects, were entered into in March or April of 1958 between a company known as James J. Morrissey, Inc., and Local 816. James J. Morrissey Inc., your Honor, is the trucker who is the commissary carrier for Schraffts. He has a contract with Schraffts whereby they pay all wages of his drivers and there is a margin of profit provided for, so that Schrafft is not only indirectly but directly affected by the contractual agreement. Mr. Schmidt reviewed this contract for Schraffts and had conferences on the contract with Mr. Lester Connell of Local 816.

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Again, your Honor, this year contractual negotiations were entered into on behalf Coin Service Company. The Coin Service Company, your Honor, is a company that has offices in New Jersey and is headed by one Jack Miller. Mr. Schmidt's office represented this company and they have been conducting negotiations for the past six months looking the arriving at a contract between Local 575, a Teamster local in New York, and the Coin Service Company of New Jersey.

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MR. WILLIAMS: Again, your Honor, and I am only addressing myself, of course, to things that have happened since the signing of the consent decree on January 31, 1958, Mr. Schmidt's office, through him, and through his associate, Mr. Larry Smith, have represented the Independent Sanitation Owners Group in New York in contractual negotiations with Local 813 in New York. And these negotiations have been carried on over a period of several months, and I have here the correspondence on that subject which I would like to offer as Defendants' 4, which is correspondence from Mr. Schmidt's office to the employer concerning the terms of the contract that was being negotiated between Mr. Schmidt acting for the Independent Sanitation Owners Group of New York and Local 813.

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But, we have never been able to get into a local union and it is absolutely essential if we are to carry out our duties under Section 5 of the decree.

Now, I have asked the Court to interpret whether or not this section is mandatory; and whether or not you wish us just to make temporary stop-gap recommendations in order that there can be a convention quickly or as quickly as the International wants it.

Now why do I say that? I say this: Why do I ask you to say that this is mandatory? You see, the respondents take the position, your Honor that we shall only recommend and advise. Now if there are two sections in this order that I read to be mandatory, duties upon us, to comply and to order them to do, is to set up equitable standards of auditing and reporting that would deal with a fiduciary. We have secured Price-Waterhouse to give us this information. Naturally, our recommendations of course should only be legal and reasonable.

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BRIEF FOR APPELLANTS

In The

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED APR 14 1959

Joseph W. Stewart
CLERK

NO. 14,983

JOHN F. ENGLISH, et al.,

Appellants,

v.

JOHN CUNNINGHAM, et al.,

Appellees.

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Edward Bennett Williams
1000 Hill Building
Washington, D. C.

Counsel for Appellants

QUESTIONS PRESENTED

A. When members of a union, alleging "rigging" of a convention, sue to prevent the installation of the officers elected and the constitution adopted by that convention; and when, before presentation of the defense, a consent decree is entered, (1) provisionally installing the officers and the constitution, (2) requiring the officers to make certain reforms and to study the advisability of other reforms, (3) constituting a Board of Monitors to "counsel with and make recommendations to" the officers with regard to specified matters, and (4) authorizing the officers to call a new convention after one year and earlier than the expiration of their constitutional 5-year term of office, the monitorship to terminate upon the election of officers at such convention:

1. May the decree be construed to confer upon the Board of Monitors the power to issue orders to the officers required to be obeyed, rather than counsel or recommendations required only to be considered?

2. May the decree be construed to confer upon the Board of Monitors powers in areas of union affairs other than those specified in the decree?

3. If the answers to questions 1 and 2 above are in the negative, may the District Court, without giving the appellees the option of renewing the trial and presenting their defense, modify the decree to

confer upon the Monitors mandatory rather than advisory powers, to extend their powers to areas of union affairs other than those specified in the decree, and to abrogate the authority of the officers to call a new convention?

B. Does the record sustain the various findings and conclusions of the District Court to the effect that the appellants had violated the consent decree by "bad faith" refusals to obey "Orders of Recommendation" issued by the Board of Monitors?

C. May the District Court require appellants to act in violation of the union's constitution?

D. Did the District Court properly refuse to remove Godfrey P. Schmidt as a member of the Board of Monitors when proof was adduced that, subsequent to his appointment to said Board, he represented employ~~ees~~er in proceedings against and in contract negotiations with locals of the union, although there was no proof that, in such representation, he had actually compromised the interests of the union or its members?

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,983

JOHN F. ENGLISH, *et al.*,
Appellants,

v.

JOHN CUNNINGHAM, *et al.*,
Appellees.

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the District Court, rendered December 11, 1958, has not been reported. It appears at pp. 164 to 176 of the Joint Appendix (hereinafter "J. A.").

JURISDICTIONAL STATEMENT

The jurisdiction of the District Court for the District of Columbia was invoked in the instant suit under the Act of June 25, 1948, c. 646, 62 Stat. 930, 28 U.S.C. §1332; the Act of June 23, 1947, c. 120, Title III, §301(c) - (e), 29 U.S.C. §185(c) - (e); and Rule 17(b), F.R. Civ. P. The suit below, begun in September 1947, culminated in a consent decree approved and entered on January 31, 1958. J. A. 58. This appeal is from an order of February 9, 1959, purporting, *inter alia*, to construe and modify the said consent decree. J. A. ~~280~~. 281.

This Court has jurisdiction of the appeal under the Act of October 31, 1951, c. 655, 848, 65 Stat. 726, as amended, 28 U.S.C. §1291; or the Act of June 25, 1948, c. 646, 62 Stat. 929, as amended, 28 U.S.C. §1292.[1]

---

[1] In his order of March 3, 1959, denying a stay of the order appealed from, Judge Letts gratuitously recited that the order did not appear to be appealable. The Court's attention is invited, however, to the opposition filed on behalf of Judge Letts in Cunningham, et al. v. Letts, No. 14,889, an original action in this Court seeking a writ of prohibition or mandamus to prevent entry of the order here appealed from. In that opposition it was stated on behalf of Judge Letts, at pp. 9-10, that the extraordinary writs were not issuable because:

> "An appeal will lie as soon as respondent enters the contemplated order in modification of the original consent order."

* * *

> "Moreover, if not reviewable under §1291 [of Title 28, U.S.C.], respondent's order would plainly warrant review under §1292."

* * *

> "The appellate review that will be open to petitioners upon entry of respondent's order plainly provides an adequate remedy."

The order ultimately signed by Judge Letts and now under appeal is, in all material respects, the same order as was sought to be prohibited.

The Chairman of the Board of Monitors, it should be noted, in his answer of March 16, 1959, to appellant's motion for a stay filed herein on March 4, 1959, merely refers to the aforementioned opinion by Judge Letts that the order is nonappealable, but does not argue nonappealability. Nor have the Monitors or the appellees moved to dismiss the appeal. That the order is appealable, Judge Letts' gratuitous opinion to the contrary notwithstanding, adequately appears from the authorities cited on his behalf in his aforementioned opposition in No. 14,889.

STATEMENT OF THE CASE

The Suit and the Preliminary Injunction

The order appealed from arises from a suit brought against appellants in September 1957 by thirteen members of the International Brotherhood of Teamsters (hereinafter referred to as "the Union") on behalf of themselves and all other members of the Union. The complaint alleged violations of the Union constitution by the defendants and sought, by way of relief, an injunction in effect prohibiting the conduct of any business at the Seventeenth Convention of the Union scheduled for September 29, 1957, and the appointment of masters or receivers to supervise election of delegates to a new convention. J. A. 1.

On September 28, 1957, the District Court, by Judge Letts, issued a preliminary injunction in effect prohibiting the holding of the 1957 convention. J. A. 31. That same day, this Court, in No. 14,114, stayed the effectiveness of that injunction. J. A. 34. A petition to vacate the stay was denied by the Chief Justice of the United States, sitting as Circuit Justice. J. A. 33. The 1957 convention was thereupon held, new officers were elected, and a new constitution was adopted, amending in some respects the 1952 constitution.

The plaintiffs then amended their complaint to attack the proceedings at the 1957 convention, seeking to prevent the effectuation of any of its acts. J. A. 35. On October 16, 1957, appellants answered the amended complaint, denying substantially all but its formal allegations. J. A. 38. On October 23, 1957, Judge Letts issued a new preliminary injunction in effect (1) prohibiting the assumption of office or the receipt of salary by any of the persons elected to office by the 1957 convention, and (2) forbidding the expenditure of Union funds or the application of any decision of the 1957 convention in contravention of the 1952 constitution. J. A. 51. On November 4, 1957, this Court, in No. 14,201, modified the latter part of the injunction to provide that, during its pendency, the Union's officers were to be governed by the 1952 rather than the 1957 constitution. J. A. 54. The case was then set for trial.

The Compromise and the Consent Decree

The prospect, so far as the Union and the other appellants were concerned, was that the will of the 1957 convention would be thwarted for an extended period, with the Union remaining under the leadership of its former General President, Dave Beck, and under the government of a rejected constitution. Negotiations were therefore entered into between counsel for appellants and counsel for appellees looking toward some practical compromise of the litigation. After twenty-two days of trial, when the plaintiffs had put in their entire case and rested, but before appellants had begun to put in their defense, the parties agreed upon a compromise settlement and embodied it in a consent order which was presented to Judge Letts for signature and adopted by him on January 31, 1958. J. A. 58.

What the appellants wanted and could hope to gain by defeating the suit was immediate installation of the Union's new officers for a full five-year constitutional term and immediate effectuation of the 1957 constitution. What the appellees sought by their suit was to prevent the installation of the new officers and the effectuation of the new constitution and to bring about a new convention and a new election procedure.

The consent order embodied a very broad compromise of the controversy. The appellants obtained immediate effectuation of the decisions of the 1957 convention (para. 1), but provisions were made looking toward a new convention before the end of the constitutional five-year term (para. 8). The appellees, on the other hand, contented themselves with the likelihood of an early new convention and with the following additional considerations:

(1) The consent order, reinforced by the usual contempt sanctions, forbade officers of the Union to have business or financial interests in conflict with the interests of the Union (para. 6).

(2) The order required custodians of Union funds to adhere to standards prescribed by law for fiduciaries (para. 5).

(3) The General Executive Board of the Union was required to "review and where needed establish" accounting procedures for Union funds (para. 5).

(4) The General Executive Board was required to "examine and review the status and condition of affiliated local unions under trusteeship to the end that trusteeships be removed and self-government restored with all deliberate speed consistent with the best interest of the membership of such locals" (para. 7).

(5) In connection with a new convention, the General Executive Board was required to recommend to the locals that delegates

be elected by secret ballot and, where practicable, under the supervision of such outside agencies as the Honest Ballot Association (para. 9).

(6) A Board of Monitors was appointed by the court, consisting of three members: one named by each side and one jointly named by both. The Monitors were to be subject, as officers of the court, to judicial supervision and direction in the performance of their enumerated duties (para. 2).

(7) The Monitors, to ensure Union democracy, were to "counsel with the General Executive Board of the Union and make recommendations upon review of appeals taken pursuant to the provisions of the International constitution" (para. 3).

(8) The Monitors were to draft model by-laws for locals not inconsistent with the Union constitution, which by-laws the General Executive Board was required to "recommend for adoption by the local unions" (para. 4).

(9) The General Executive Board, in reviewing accounting procedures, was required to do so "in consultation with the Board of Monitors" (para. 5).

(10) The Monitors, like the General Executive Board, were to examine and review all trusteeships and were to "counsel with and make recommendations to the General Executive Board" in that connection (para. 7).

(11) In connection with the Credential Committee's examination of the credentials of delegates to the new convention, the Monitors were "authorized to counsel with such Credentials Committee and make recommendations to it" (para. 9).

(12) The Monitors were authorized to "make recommendations after consultation with the General Executive Board for amendments to the International constitution for proposal at the next International convention" (para. 11).

(13) The Monitors were to be compensated for their services out of Union funds in amounts to be fixed by the court (para. 10).

(14) The General Executive Board was required to provide the Monitors with clerical and technical help (para. 12).

The calling of the new convention, which was the keystone of the compromise, was placed by the consent order at the discretion of the General Executive Board, to be exercised at any time after one year from the date of the order, but in no event later than 1962, the time provided in the constitution for the next regular convention (para. 8). The Monitors were authorized "to recommend to the General Executive Board after the expiration of one year" that a convention be called (ibid.). Assurance to the plaintiffs that the General Executive Board would heed such recommendation, rather than keep itself in power for the full five-year term possible under the consent order, lay in the provision of the order terminating the monitorship upon the holding of a new convention (ibid.). By the scheme of the compromise, the monitorship was to last at least a year, but no more than five years. The desire to shed the incubus of the monitorship was calculated to induce the General Executive Board to call a convention as soon as possible after the first year.

The purpose of putting the new convention off for a year was to afford an opportunity for the newly installed officers, with the counsel of the Monitors, to study, as they had undertaken to do, some of the conditions left by the former administration of the Union and to make such changes as they deemed necessary and proper. Except for the few specific obligations the consent decree imposed on the new officers, as above detailed, it did not require them to make any changes and certainly imposed no deadlines. What the parties believed and relied on was that a year's review of the conditions in the Union, with such changes as the officers, advised by the Monitors, deemed necessary and proper to make, would assure free and fair elections.[2] That there was good reason for such reliance is apparent from the Report of the Board of Monitors for the period up to May 27, 1958, before the Monitors, under Mr. O'Donoghue's chairmanship, began to issue "orders" rather than give counsel. As that report shows, the General Executive Board cooperated with the Board of Monitors and very satisfactory progress was made.[3] For example, 41 of the 109 trusteed locals had already been removed from trusteeship and 21 more were in the process of restoration to self-government.[4]

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[2] For one thing appellees could well have relied on the pressure of public opinion to induce the officers to make necessary changes. Cf. Chafee, *infra*, p.51. For another they were aware that if the new elections should violate the constitution, a new suit, founded upon evidence supplied by the Monitors from their point of great vantage, would have every prospect of success.

[3] Initial Report of Board of Monitors to Judge Letts, Defendants' Exhibit 20, pp. 2-10.

[4] *Id*. at 7-8.

Also, the charters of the so-called "paper locals", which had been the subject of great publicity, had been revoked.[5]

Other relief sought by plaintiffs in their amended complaint and granted them by the consent order was a prohibition of any reprisals against the plaintiffs and their witnesses and affiants and a provision for payment of the fees and expenses of the suit out of Union funds (paras. 13 and 14).

The record makes it clear beyond peradventure that the parties intended this consent order as a full compromise to settle and dispose of the litigation--not as a merely procedural or interlocutory step in a continuing litigation--and that this intention was fully understood by Judge Letts in approving the order. In presenting the order to the trial court, counsel for appellants described it as "a disposition of this case", bringing the case to "an equitable conclusion". Tr. 3721, 3722. Mr. Schmidt, speaking for the appellees, said:

> "If the Court please, may I say in the first place that I join in everything that Mr. Williams has stated to this court, and my colleagues will after me.
>
> "I have gone over this consent order and the arrangements for settlement of this very important litigation with great attention to every detail, and I think that it is as fine a settlement of as difficult a problem as I have ever been confronted with in my life." Tr. 3734-35.

Mr. Schmidt's co-counsel, Mr. Dodd, declared that he was "pleased with the result" and subscribed to what had been said by other counsel. Tr. 3736. Judge Letts, for his part, complimented counsel for "a settlement of these great issues". Tr. 3738.

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[5] Id. at 8.

The Undoing of the Compromise

The parties operated under this consent decree for several months with apparently perfect harmony. The Honorable Nathan Cayton, the original chairman of the Board of Monitors, in a report to Judge Letts, stated that the Monitors had received "the enlightened cooperation of the International Union".[6]

In May of 1958, Judge Cayton resigned and was replaced as a Monitor and as chairman of the Board of Monitors by Mr. Martin F. O'Donoghue. Soon thereafter, the character of the activities of the Board of Monitors changed sharply. At its very first meeting under Mr. O'Donoghue's chairmanship, the Board of Monitors, which had theretofore been counselling with and making recommendations to the General Executive Board, decided that it would thenceforward issue "orders or requests". These "orders or requests" were, moreover, to be in writing and in certain instances were to specify compliance dates.[7] A month later, apparently to minimize even further the possibility that the Monitors might "counsel with" the General Executive Board, the Board of Monitors moved its offices out of the Teamsters International Building to Mr. O'Donoghue's offices in the Tower Building.[8] Moreover, the Monitors began to expand the area of their activities far beyond the specific limits of the consent order, undertaking to bring about what they chose to call a "general house-cleaning" of the Union. On August 25,

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[6] Id. at 45.

[7] Id. at 13.

[8] Id. at 11.

1958, for example, the Board of Monitors with one member dissenting, issued its "Order of Recommendation No. 16" that expulsion proceedings be instituted against one of the Union's vice presidents "on the grounds of misappropriation, and on the grounds that he has violated his oath of loyalty and his oath of office, that he has engaged in conduct unbecoming a member and activities which tend to bring the Union into disrepute, and that he has committed acts which are inconsistent with the duties, obligations and fealty to members of the Union and which violate sound trade union principles". J. A. 312.

The General Executive Board of the Union, which had treated with "enlightened co-operation" the recommendations made by the Monitors when Judge Cayton had been chairman, continued to make every effort to comply even with the "orders of recommendation" promulgated under Mr. O'Donoghue's leadership. Indeed, as we shall show in point V of the argument, infra, the General Executive Board complied completely with most of the "orders of recommendation" and complied substantially with almost all of them. To the extent that any "order of recommendation" was not completely followed, the General Executive Board stated that it considered the order violative of the Union constitution, beyond the Monitors' authority, or grossly impractical.

On September 17, 1958, two of the Monitors filed with the District Court a "Petition of the Board of Monitors for Construction, Reformation and/or Modification of the Consent Order and for Instructions and Orders of Compliance". J. A. 64. On September 30, 1958, a similar petition was filed by Mr. Godfrey P.

Schmidt (co-signer with Mr. O'Donoghue of the Monitors' petition) on behalf of the plaintiffs (except plaintiff John Cunningham). J. A. 99. These petitions sought to establish for the Monitors not only mandatory power over the Union's General Executive Board, but also authority to invade the area of intra-Union disciplinary problems.

The petitions were heard before Judge Letts from November 5 to November 13, 1958. Evidence was given by Mr. O'Donoghue concerning the Union's failure to "comply" with the Monitors' "orders". J. A. 477-526, passim. On behalf of the Union, evidence was introduced detailing the substantial acceptance of most of the "orders" and explaining the Union's failure to accede to some of them: that some of the "orders" were beyond the proper scope of the Monitors' authority, that some violated the constitution, that the execution of some was actually forbidden by injunctions issued in other proceedings, and that some were unworkable. J. A. 527-~~71~~ 675, passim.

On December 11, 1958, Judge Letts issued his Memorandum Opinion holding that the Monitors possessed mandatory powers and that the scope of their authority included a "general housecleaning" of the Union. J. A. 164. As we shall hereinafter show, this opinion, though appearing for the most part to be based on a construction of the consent order and specifically modifying the order only in one respect,[9] was a melange of construction and modification defying easy analysis.

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[9] "The court finds it necessary to modify and amend the consent order by deleting therefrom the privilege (continued next page)

In the Memorandum Opinion of December 11, 1958, the Court also took occasion to deny appellant Union's petition, filed September 29, 1958 (J.A. 85), for the removal of Mr. Godfrey P. Schmidt as a member of the Board of Monitors on the ground of conflict of interest, holding that the evidence adduced in support of the petition failed to demonstrate such conflict.[10/]

The Court requested Mr. O'Donoghue, as chairman of the Board of Monitors, to prepare findings, conclusions and an order consistent with the opinion and, on January 3, 1959, Mr. O'Donoghue presented them. The findings and conclusions thus presented were adopted by the Court on February 9, 1959, over appellants' objections and without a single change. J. A. 177, 206. At the same time the Court entered, after eliminating one paragraph relating to publication of certain material in the Union's magazine, Mr. O'Donoghue's proposed "Order of the Court Construing and Modifying Consent Decree". J. A. ~~280~~ 281. On February 20, 1959, the appellants requested that the Court grant a stay of its order pending the determination of an appeal from it to be taken by the appellants to this Court. This request was denied by the District Court on March 3, 1959. The next day the appellants

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9/ (continued) granted the teamsters of calling a new convention after one year and inserting the following provision:

> 'The time for the convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International, with the exact time of holding the convention being subject to the final approval of the Court.'" J. A. [illegible] 169-170.

[10/] The facts relating to the petition for removal will be stated in point VII of the argument, _infra_.

filed their notice of appeal to this Court from the order of February 9, 1959 (J. A. 298), and filed in this Court a motion for a stay of the order appealed from, which motion was heard by the Court on March 24, 1959, and was granted on March 31, 1959.

The principal provisions of the order appealed from are as follows:

> 1. It commands the appellants to "comply promptly and fully" with certain "Orders of Recommendation" heretofore made by the Board of Monitors in pursuance of its undertaking to effect a general house-cleaning of the Union and "with all future Board of Monitors' Orders of Recommendation that are reasonable and relevant to the basic purposes of the Consent Decree".
>
> 2. It modifies the consent decree to deprive the Union's General Executive Board of discretion as to the date of the next convention.
>
> 3. It declares an interpretation of Article X, Section 5(c) of the 1952 constitution and the 1957 amendment thereto, orders appellants to adopt said interpretation, and directs a procedure to be employed thereunder.
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> 4. Among the Monitors' "Orders of Recommendation" to which it commands obedience is Order of Recommendation No. 18, which requires publication in the Union's magazine, "The International Teamster", of all of the Monitors' Orders of Recommendation beginning with No. 15. The estimated cost of publication of the Orders of Recommendation thus far issued, as shown by the affidavit of

James Ragsdale filed in support of appellants' motion for a stay herein is $17,400.00.

5. It records the denial of the petition for removal of Mr. Schmidt as a member of the Board of Monitors and orders appellant Union to have read at local union meetings and to publish in its magazine a statement that the court has found that the Union had presented no evidence to support the petition and that the motion was wholly without merit.

STATEMENT OF POINTS

1. The order of February 9, 1959, herein appealed from, is based upon an erroneous and unwarranted construction of the consent decree of January 31, 1958.

2. The order appealed from is an invalid modification of the consent decree.

3. The order appealed from is void for uncertainty.

4. The order appealed from constitutes an invalid delegation of judicial authority to the Board of Monitors.

5. The principal findings upon which the order appealed from is based are not supported by the evidence, but are rather in violent conflict therewith.

6. The order appealed from is improper to the extent that it requires the appellants to violate the Union constitution.

7. The order appealed from improperly denied appellant Union's petition for the removal of Godfrey P. Schmidt as member of the Board of Monitors, upon the erroneous conclusion that appellants had presented no evidence in support thereof.

SUMMARY OF ARGUMENT

The legal theory upon which the court below based the order of February 9, 1959, as revealed by its Memorandum Opinion of December 11, 1958, is an ill-defined mixture of construction and modification. The court first concluded, on the basis of United States v. Swift & Co., 286 U.S. 106 (1932), that it had authority to modify the consent order. But, in the very next sentence of the opinion, it declared:

> "The conclusion is reached that a construction of the consent order requires a determination of the basic purpose for which the order was entered."[11] J. A. 165.

And, in the light of that purpose as the court determined it, it held that the Monitors' "powers are not limited . . ." and that the consent order placed upon them the duty and responsibility to do whatever was necessary to accomplish a "general house-cleaning". J. A. 167, 168. Then, however, the opinion appears to slide into a mixture of construction and modification as the basis for decision. It states:

> "As has been indicated, the consent order is not to be construed by a literal reading of its provisions. The Monitors are officers of the Court and their powers are not limited by the grant of express powers. All other powers reasonably necessary to effect the basic purposes of the order are implied and available to the Monitors and in view of changed circumstances the inherent powers of the Court are at command to achieve the basic purposes of the order." J. A. 168.

This language appears to constitute a frank return to the theory of the Swift case--modification of the consent decree.

Although the only modification, labeled as such, of the consent decree, related to the date of the new convention, the ambiguity of the Memorandum Opinion compels us to treat the balance of the order as based upon both construction and modification. We shall accordingly show in our argument that the order is wrong on either theory.

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[11] Emphasis here and hereinafter supplied, unless otherwise indicated.

I

The clear language of the consent decree confers upon the Board of Monitors, for the most part, purely advisory or recommendatory functions and specifically limits the areas of Union affairs in which those functions may be exercised. It cannot fairly be construed to have given the Monitors command powers or authority to inject themselves into areas of Union affairs other than those enumerated.

Moreover, even if it were proper to resort to the background of the consent decree for aid in its construction, nothing in that background supports a construction giving the Monitors command powers and unrestricted range of interference. Such a construction, indeed, would give the appellees more than they had sought by their complaint and more than they could have obtained if appellants, rather than making a compromise, had either defaulted or lost after putting in their defense.

II

If the order appealed from be looked upon as a modification of the consent decree, it is improper on several grounds.

First, by the nature of the case, the decree was not within the District Court's power to modify, because, unlike the modifiable consent decrees referred to in United States v. Swift & Co., 286 U.S. 106, 114 (1932), which deal with "changing conduct or conditions", the instant consent decree embodied a compromise of a controversy involving "rights fully accrued upon facts so nearly permanent as to be substantially impervious to change . . . ."

Second, if the decree were judicially modifiable, the conditions justifying modification were absent here. Nothing that has happened since the decree was entered constitutes a new or unforeseen condition calling for modification. To modify the decree as the District Court has done thwarts the purpose of the decree rather than effectuating it. And the modification is inconsistent with appellants' due process rights in that, without giving them a chance to defend themselves, it now imposes upon them restraints which the complaint never demanded and to which they never consented.

III

Even if the consent decree were construable or modifiable to grant the Monitors command functions and authority to act in all areas of Union affairs, the order appealed from, by requiring compliance "with all future Board of Monitors' Orders of Recommendation that are reasonable and relevant to the basic purposes of the consent decree" (J. A. ~~280~~ 281), is void for uncertainty.

IV

To the extent, moreover, that the order appealed from requires appellants to obey future orders of the Monitors, it is invalid as a delegation of judicial authority to the Monitors.

V

The changed condition upon which the modification of the consent decree is sought to be justified is that the appellants were guilty of "bad faith" violation of certain "Orders of Recommendation" issued by the Monitors. Although the record would support findings that certain of the Monitors' Orders of Recommendation were in part not complied with by appellants, it also shows that the Monitors' wishes were, for the most part, complied with and that, to the extent that there was a failure to comply, there were reasons and circumstances totally negating the possibility of "bad faith". The various findings and conclusions of the District Court that appellants were guilty of bad faith are, therefore, without record support and should be vacated.

VI

By paragraphs 6 and 7 of the order appealed from, the District Court, incorporating by reference its Conclusions of Law Nos. 16 and 17, requires the appellants to take action in connection with Article X, section 5(c) of the Union constitution. The required action is violative of the plain meaning of the constitution. The interpretation of the constitution made by the District Court, pursuant to which the required action is ordered, is clearly incorrect.

VII

In addition to the various errors committed by the District Court with respect to the construction and modification of the consent decree, as set forth in the foregoing six points, the

District Court erroneously denied the petition of the appellant Union for removal of Godfrey P. Schmidt as member of the Board of Monitors. In the face of undisputed evidence that Mr. Schmidt, while serving as a Monitor, was representing employ~~ees~~er in proceedings against and negotiations with locals of the appellant Union, the District Court held that there had been no proof of conflict of interest justifying his removal as Monitor. The District Court appears to have adopted the erroneous theory that, to justify removal, there must be a demonstration of actual conduct detrimental to the interests of the Union, potential conflict of interest being deemed immaterial.

ARGUMENT

I. The Order of February 9, 1959, Is an Erroneous and Unwarranted Construction of the Consent Decree.

A consent decree is an agreement of the parties, under judicial sanction, as to how a case shall be disposed of. The Ansaldo San Giorgio I, 73 F. 2d 40 (2d Cir. 1934), affirmed, 294 U.S. 494 (1935). "It may well be conceded that as between the parties a consent decree is conclusive as to its contents and . . . is to be reviewed as written." Star Bedding Co. v. The Englander Co., 239 F. 2d 537, 541 (8th Cir. 1957). Consent decrees "are to be read within their four corners, and especially so because they represent the agreement of the parties, and not the independent examination of the subject matter by the court.[12] They are binding only to the extent to which they go. Neither court nor party can write in them what is not there, and thus change what was agreed upon between the parties." American Radium Co. v. Hipp. Didisheim Co., 279 Fed. 601, 603 (S.D.N.Y. 1921), affirmed, 279 Fed. 1016 (2d Cir. 1922). At one stage of the proceedings below, the District Court recognized these principles, saying:

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[12] As is stated in the Memorandum Opinion of December 11, 1958, in adopting the consent decree, "The Court was not called upon to weigh the evidence which had been adduced." J. A. 164.

> "Gentlemen, let us put this thing in its proper light. This decree was not, in a true sense, the action of the Court. It was an agreement between the plaintiffs in the case and the defendants. And the question raised here I think must be determined by understanding what was within the contemplation of the parties when they made this agreement, and when they prepared and brought to the Court this consent decree.
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> * * *
>
> "I must look at this more or less like enforcing a contract. Because it was a consent decree." J. A. 469

This consent decree as written creates a Board of Monitors with certain "duties as hereinafter enumerated" (para. 2). J. A. 59. There is no way to read these enumerated duties as including authority to order action by the Union or to engage in a "general house-cleaning" operation.

A. The Language of the Consent Decree Is Clear and It Clearly Negates the District Court's Construction.

This consent decree was the result of negotiation and careful drafting by lawyers on both sides who can be presumed to have known the meaning of the words they used. Where they intended the Board of Monitors to have mandatory powers, they knew how to express that idea and did express it. Thus, where it was intended that the Monitors have the power to compel the General Executive

Board to recommend new by-laws to the locals, the draftsmen of the order wrote in paragraph 4:

> "The Board of Monitors shall draft a model code of local union by-laws not inconsistent with the International constitution . . . which . . . the General Executive Board . . . *shall* recommend for adoption by the local unions."[13] J. A. 60.

There is no ambiguity about this language. The General Executive Board, if the by-laws drafted by the Monitors are not inconsistent with the constitution, *must* recommend their adoption. They have no discretion to refuse to recommend the by-laws on the ground that they consider them impractical or foolish.

By contrast, in connection with the review of appeals, the draftsmen wrote in paragraph 3:

> "The Board of Monitors . . . shall *counsel with* the General Executive Board . . . and *make recommendations* . . . ." J. A. 59-60.

Similarly, in connection with approval of delegates' credentials at a new convention, they wrote in paragraph 9:

> ". . . the Board of Monitors is authorized to *counsel with* /the/ Credentials Committee and *make recommendations to it*." J. A. 62-63.

Also, in paragraph 11, with regard to proposals for amending the constitution, they wrote:

> "The Board of Monitors . . . may make *recommendations* after consultation with the General Executive Board . . . ." J. A. 63.

As to the date of the new convention, they wrote in paragraph 8:

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[13] The consent order did not, however, make it mandatory upon the locals to accede to the General Executive Board's recommendation for adoption of the by-laws drafted by the Monitors.

> "The Board of Monitors may recommend to the General Executive Board after the expiration of one year from the date of this order that a new convention and election be held." J. A. 62.

In the same vein, though in somewhat different form, they wrote in paragraph 5, with regard to accounting procedures:

> "The General Executive Board in consultation with the Board of Monitors shall review and where needed establish accounting and financial methods, etc." J. A. 60.

The intent of the parties, as expressed by the carefully chosen language they used, was that, with regard to the foregoing matters--namely, the review of appeals, the approval of credentials, proposals for constitutional amendments, the date of the new convention, and the revision of accounting procedures--the Board of Monitors was to have authority only to counsel and recommend, but not to command. This becomes crystal clear by comparison with the language of paragraph 7 of the consent order which gives the Monitors both mandatory and recommendatory powers. The draftsmen wrote in that paragraph:

> "The Board of Monitors shall examine and review the status and condition of locals where trusteeships are maintained and shall counsel with and make recommendations to the General Executive Board looking toward the removal of trusteeships where removal is consistent with the best interest of the membership of the locals." J. A. 61.

The use of both mandatory and permissive terms requires that they be read as contradistinctive. Steel Products Engineering Co. v. United States, 71 Ct.Cl. 457 (1931). What the parties intended and what the paragraph means is that the Monitors are required to examine and review the trusteeships and, by necessary implication, the General Executive Board of the Union is required to permit and facilitate such examination and review; but having examined and reviewed the trusteeship, the Monitors have no authority to terminate any of them or to order such termination, but only to seek to persuade the General Executive Board to terminate them. The General Executive Board is not required to yield to the persuasion. It must receive the Monitors' counsel and recommendations, but is then free to act in its own best judgment. This is obviously far different from the paragraph 4 provision, referred to above, that, when proposed new by-laws are prepared by the Monitors, which do not violate the constitution, the General Executive Board, whether it likes them or not, must submit them to the locals with a recommendation for adoption.

The language of the consent order is clear. But for the express requirement that the General Executive Board recommend to the locals for adoption the by-laws drafted by the Monitors and but for the implied requirement, with respect to all matters as to which the Monitors are given authority to counsel and recommend, that the General Executive Board or the Credentials Committee receive and consider the counsel and recommendations, nothing in the consent order requires the Union to accede to any desire of the Monitors that it deems unwise or unsound. As was said in People of Virgin Islands v. Price, 181 F.2d 394, 396 (3d Cir. 1950):

> "To recommend is to present as one's advise or choice or as having one's approval. It ordinarily involves the idea that another has the final decision." 14/

14/ The court held that, under a statute providing that the jury "shall recommend whether the penalty be (continued next page)

In Mora County Board of Education v. Valdez, 61 N.M. 361, 300 P.2d 943, 946 (1956), where the County Board of Education had discharged certain teachers and the State Board of Education passed a formal resolution that it "recommends to the Mora County Board of Education that they reconsider their decision and reinstate the teachers in their former positions", the court denied mandamus against the county board, saying that, although the state board was a superior authority, "a mere recommendation . . . must leave to the county board a residuum of decisional power, or a field in which it may yet exercise its choice one way or another". And in People v. San Bernardino High School District, 62 Cal. App. 67, 216 Pac. 959, 960-61 (1923), a statute providing that the "board of supervisors . . . shall upon recommendation of the county superintendent of schools" annex certain common school districts to certain high school districts was construed to mean that the county superintendent's "recommendation" is only a suggestion, the decision being left to the board of supervisors. See also Ingard v. Barker, 27 Idaho 124, 147 Pac. 293, 297 (1915); In re Kane, 144 App. Div. 196, 129 N.Y. Supp. 280, 285 (1911); In re Whitcomb's Estate, 86 Cal. 265, 24 Pac. 1028 (1890); Newport Hospital v. Harvey, 49 R.I. 40, 139 Atl. 659, 661 (1927); and People v. Woodruff, 166 N.Y. 453, 60 N.E. 28, 30 (1901).

The omission from the consent order of any obligation upon the Union to accede to the Monitors' desires was not an oversight.

14/ (continued) death or imprisonment", it was error for the trial judge to consider a recommendation of death as binding upon him. See also People v. Ray, 92 Cal. App. 417, 268 Pac. 382, 384 (1928).

It was a studied choice, dictated to experienced labor lawyers by the fact that the Union is governed by a written constitution, pursuant to which the affairs of the International are to be administered by its elected officers and by which those officers' powers to intervene in the affairs of locals and other subordinate bodies are severely circumscribed.[15] The initial draft of the consent order, proposed by appellees' counsel, had provided for "trustees" empowered to "supervise the officers" of the Union, "enforce" the constitution, and "require compliance".[16] That draft was rejected in favor of the present order providing for Monitors with authority to "counsel" and "recommend".

Just as clearly as the consent order limits the Monitors to purely recommendatory functions, so also does it limit the subject matter of their activity. Under paragraph 2 of the consent order, the Monitors have only "these duties as hereinafter enumerated". The succeeding paragraphs enumerate the areas of activity of the Monitors as follows:

Paragraph 3.	Appeals taken pursuant to the provisions of the International constitution.
Paragraph 4.	By-laws of local unions.
Paragraph 5.	Accounting procedures.
Paragraph 7.	Trusteeships.
Paragraph 8.	The call of the new convention.

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[15] This is so both under the 1957 constitution and the 1952 constitution.

[16] *Supra* note 3 at 203.

Paragraph 9. Credentials of convention delegates.

Paragraph 11. Amendments to the International constitution. There is no other area of the Union's affairs in which the Monitors are given any power to interfere, even to the extent of counselling or making recommendations. Nothing in the consent order gives them authority to undertake a "general housecleaning" of the Union. They have no vestige of power, for example, to force suspensions or expulsions of local or International officers on grounds of alleged criminality, as they sought to do by their Orders of Recommendation Nos. 12, 16, 17 and 19 and as the District Court has now held they may do.

In their search for power to enforce a "general housecleaning", Messrs. O'Donoghue and Schmidt are driven to a tortured and untenable construction of paragraph 3 of the consent order. That paragraph reads:

> "3. The Board of Monitors /in order to insure the enforcement and protection of all rights of the individual members and the subordinate bodies of the International . . . , as guaranteed by the provisions of the International constitution, in particular,
>
> a. The right to vote periodically for elective officers,
>
> b. The right to honest advertised elections,
>
> c. The right to fair and uniform qualifications to stand for office,
>
> d. The right to freedom to express views at meetings/
>
> shall counsel with the General Executive Board of the International . . . and make recommendations upon review of appeals taken pursuant to provisions of the International constitution." J. A. 59-60.

By any fair reading of the provision, the bracketed portion of the quoted paragraph is only an expression of the purpose lying behind the grant of authority made by the unbracketed portion, i.e., authority for the Board of Monitors to counsel with and make recommendations to the General Executive Board on members' appeals from alleged denials of their rights.

The bracketed language bears the same relation to the grant of authority as the Preamble to the Constitution of the United States bears to the grants of power made by the body of the Constitution. As the Supreme Court said in Jacobson v. Massachusetts, 197 U.S. 11, 22 (1905):

> "Although the Preamble indicates the general purposes for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred upon the Government of the United States, or on any of its Departments. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States, unless, apart from the Preamble, it be found in some express delegation of power or in some power to be properly implied therefrom. 1 Story's Const. §462."

So also, in paragraph 3 of the consent order, no powers are derived by the Monitors from the bracketed preamble language. They are given only such powers as are embraced in the granting clause.

Mr. Schmidt, in his argument below, sought to read the preamble language as granting language. This he did by the simple expedient of reading out of the paragraph the actual granting clause and he seems to have been not at all disturbed by grammatical deficiencies. He argued:

> "Does this order, does this particular order here, give us the right to enter such orders as we did with Brennan, Feldman, and Smith and Boling down in Tennessee. I say it does. I say that under Section 3 of the consent decree, the Court said this: 'The Board of Monitors, in order to insure the enforcement and protection of all rights -- all rights -- of the individual members, and the subordinate bodies as guaranteed by the provisions of the International constitution.' Then it says 'in particular', meaning particularizing certain things." Tr. 751.

Although the provision as Mr. Schmidt quoted it cried out for a predicate, he saw fit to suppress it. That predicate, of course, is that, for the purposes indicated by the stated language, the Monitors shall counsel with and make recommendations to the General Executive Board on members' appeals. No other power is given them.

The same deceptive reading was given to paragraph 3 of the consent order by Mr. O'Donoghue in this Court.[17] To reinforce his patently fallacious construction of the paragraph, Mr. O'Donoghue gives the language another unnatural twist and concludes that, while the Monitors' authority to "make recommendations" may be tied to members' appeals, their authority to "counsel with" the General Executive Board is not so tied and may range free through anything bearing any relation to the preamble.[18] Even if this tortured construction of the paragraph were permissible, it is difficult to see how authority to "counsel with" carries with it a power to issue enforceable commands. In a final twist of paragraph 3, for we know not what reason, Mr. O'Donoghue turns it completely topsy turvy, reading it as imposing an obligation on the General Executive Board to counsel with and make recommendations to the Monitors![19]

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[17] See Answer and Supporting Brief of Board of Monitors in Opposition to Appellants' Motion for Stay, filed March 16, 1959, pp. 5-6, footnotes 4 and 5.

[18] *Id.* at 6, footnote 5.

We submit that the Court must brush aside the various wild constructions given to paragraph 3 of the consent order by Messrs. O'Donoghue and Schmidt and must give the language its natural reading. Under such a reading there is no warrant for the sweeping powers claimed by the Monitors.

The language of the consent order being clear, there being no evidence or claim of fraud in the inducement and the instrument having been drafted in arms' length negotiations by fully competent parties, the court may not rewrite it to mean something different from what it says. Columbia Hospital v. United States Fidelity & Guaranty Co., 88 U.S. App. D.C. 251, 188 F.2d 654, cert. denied, 342 U.S. 817 (1951).

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[19] Id. at 6.

B. The Circumstances of the Case Negate Rather Than Support the District Court's Construction of the Consent Decree.

Even if there were any ambiguity in the language of the consent order such as to warrant a collateral inquiry into the intent of the parties, there is nothing in the record to show that they intended the Monitors to have mandatory powers or authority to engage in a "general housecleaning". Such power and authority in the Board of Monitors would give the appellees far more than they had sought by their complaint and would inflict upon the appellants what the compromise was designed to avoid and far more than they could have lost if they had made a flat confession of judgment.

The complaint sought the appointment of masters or receivers with powers and duties defined and circumscribed as follows:

> (a) To devise and establish, pursuant to the IBT Constitution, fair and sound procedures for elections by the members of local unions [of convention delegates]. . .;
>
> (b) To supervise compliance with the IBT Constitution and the AFL-CIO Constitution during the intra-local balloting and during the National Convention;
>
> (c) To confine. . .their supervision and authority to enforcement and lawful application of said Constitution for the purposes of said National Convention election and the intra-local elections which must precede that election, without any attempt at imposing on any member or subordinate body of the International Organization the judgment or preferences of said. . .receivers . . .or masters in equity; . . .20/ (J. A. 27)

20/ The Monitors' representation to this Court that the complaint had sought "the appointment of a receiver of the International Union to correct the existing constitutional abuses and corrupt practices", *supra* note 17 at 2, is thus clearly untrue.

Thus, had the appellants suffered a judgment against them as demanded by the complaint, whether by default, by confession or by going through full trial and losing, there would have been court-appointed officers whose powers, though mandatory, would be restricted solely to the conduct of elections preparatory to and during the next convention. Those officers would have had no authority to inject themselves into any other Union affairs, such other affairs being recognized by appellees as properly resting within the control of the Union itself. By compromising the controversy, the parties must necessarily have intended that the restrictions placed upon the appellants be something less than the maximum demanded in the complaint.[21] How much less is clearly indicated by the consent order. The appellants accepted the imposition of court-appointed officers, but with recommendatory rather than mandatory powers. Yet the court below now attributes to appellants an intent not only that the Monitors should have mandatory powers, but that these powers should range through the entire area of Union affairs, far beyond the fondest hopes of the appellees as expressed in their prayer for relief.

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[21] At one stage of the proceedings below, both the District Court and Mr. Schmidt recognized the fact. See transcript of hearing of June 26, 1958, p. 98:

> "The Court: You are assuming that this consent decree rests upon your obtaining all of the relief asked, which was not true.
>
> Mr. Schmidt: No, I do not think that is my assumption, your Honor. I realize that not all of the requests that I made were granted. As a matter of fact, we never would have had a compromise consent order had that been so. . . ."

One may search in vain for some record basis for attributing to the parties an intent to give the Monitors mandatory powers and authority to perform a "general housecleaning." The District Court rested its construction upon an alleged "tacit understanding" that the appellees had adduced evidence entitling them to all the relief they sought. Even if this were so, they would not be entitled to more than they had sought, which is exactly what the District Court's construction gives them.

But it is clear from the record that there was in fact no "tacit understanding" that the evidence had proved appellants' liability.[22] The record shows, indeed, that the court below was merely making an improper inference from the compromise that the appellants had conceded liability. Certainly the court never found that the evidence pointed to liability, for, as recited in the Memorandum Opinion, "The Court was not called upon to weigh the evidence which had been adduced." J. A. 164. Indeed, it would have been the grossest of improprieties to make such a finding when the appellants had not yet had their day in court.[23] All that appears from the record is that after the appellees had put in their case and before the appellants were called upon to put in their defense, the parties compromised the action. A compromise offer "does not ordinarily proceed from and imply a specific belief that the adversary's claim is well founded, but rather a belief that the further prosecution of that claim, whether well founded or not, would in any event cause such annoyance as is preferably avoided by the payment of the sum offered. In short, the offer implies merely a desire for peace, not a concession of wrong done." 4 Wigmore, Evidence 28 (3d ed. 1940). As the Supreme Court said in West v. Smith, 101 U.S. 263, 273 (1879):

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[22] Assuming, contrary to the record, that Mr. Schmidt, as counsel for the plaintiff below, unilaterally "understood" that he had proved his case, any intent he may have had, based upon his unilateral understanding, could not bind appellants. As the court below said in connection with paragraph 14 of the consent decree: "Now, it has been argued that the Court should impute to Mr. Williams, representing these defendants, the intention which rested with Mr. Schmidt's mouth [sic]. That cannot be done." ~~J. A. 469~~ Transcript of Hearing, June 26, 1958, pg. 86.

[23] In Fruehauf Trailer Co. v. Gilmore, 167 F. 2d 324, 330 (10th Cir. 1948), it was held that no inference of negligence could be drawn from a consent judgment against the defendant. The judgment, said the court, "was not based upon any findings of fact or any determination on the merits. It was not a judicial determination by the court of any litigated right. In entering it the court merely exercised an administrative function in recording what had been agreed to between the parties."

> "By all or nearly all the cases the rule as established is. . .that an offer to do something by way of compromise. . . shall be excluded. These cannot be called admissions, as they were made to avoid controversy and to save the expenses of vexatious litigation."

See also Wood v. Morrissey, 31 F. Supp. 449 (W.D.La. 1940); Gamble-Skogmo, Inc. v. McNair Realty Co., 98 F. Supp. 440 (D.Mont. 1951); United States v. Stoehr, 100 F. Supp. 143 (M.D.Pa. 1951), affirmed, 196 F. 2d 276 (3rd Cir.), cert. denied, 344 U.S. 826 (1952); Atlas Assurance Co., Ltd. v. The Cupid, 108 F. Supp. 590 (D. Alaska 1952); Rule 68 F.R. Civ. P. The Court of Claims, in Milton S. Kronheim & Co. v. United States, 163 F. Supp. 620, 628 (1958), explained:

> "The reason for the refusal of the courts to infer an admission of liability from the mere fact of a compromise or settlement lies both in the policy of the law to encourage settlement of litigation and in the realization that it is often more advantageous, economical and desirable for a party to 'buy his peace' than to go through litigation even when his chances of eventually prevailing are great."

Only when the compromise instrument contains an "unconditional and unqualified acknowledgment of liability" may it be considered as probative of liability. Firestone Tire and Rubber Co. v. Hillow, 65 A.2d 338, 340 (D.C. Mun. App. 1949); see also West v. Smith, supra; Hawthorne v. Eckerson Co., 77 F.2d 845, 847 (2d Cir. 1935); and Milton S. Kronheim & Co. v. United States, supra. By making up out of whole cloth an inference that there was a "tacit understanding" of liability, the court below imposes a sanction against the appellants for having compromised the suit and violates the established public policy favoring compromise. Williams v. First National Bank, 216 U.S. 582 (1910); Milton S. Kronheim & Co. v. United States, supra. The result of the litigation is what the parties have provided in their compromise, not what the court thinks would have been produced by full litigation. J. Kahn & Co. v. Clark, 178 F. 2d 111, 114 (5th Cir. 1949). The District Court's inference is not permissible and the construction of the consent order it based upon that inference is untenable.

We submit that the language of the consent decree is clear and unambiguous and that the intent of the parties manifested by the words of the order as reinforced by the situation of the parties and not challenged by anything in the record, was as follows:

(1) That the constitution adopted at the 1957 convention should go into immediate effect and remain in effect until a new convention should be held.

(2) That, despite the appellees' extravagant criticism of the newly elected officers of the Union,

those officers were qualified to assume and exercise the powers of their offices and should occupy those offices until a new convention should be held.

(3) That the Board of Monitors, but for the very limited mandatory powers enumerated in the consent order, should have only consultative or recommendatory authority.

(4) That a new convention should be called, at the discretion of the General Executive Board, at any time after one year from the date of the order, but in any event within the five-year period required by the constitution.

(5) That such new convention, if held in compliance with the provisions of paragraph 9 of the consent order, (J. A. 62) would be deemed a true and accurate reflection of the desires of the membership.

(6) That the monitorship should terminate with the holding of a new convention, the appellees relying upon the natural desire of the General Executive Board to be rid of the monitorship as assurance that a new convention would not be unduly delayed.

In the light of the parties' intent, we submit that the construction placed upon the consent order by the court below was grossly erroneous.

To the extent that the order of February 9, 1959, be looked upon as a modification rather than a construction of the consent order, it is, as we shall now show, no less grossly erroneous.

II. The Order of February 9, 1959, Is an Invalid Modification of the Consent Decree.

A. The District Court Had No Power To Modify This Consent Decree

That a consent decree is subject to modification in some circumstances is a proposition with which we do not quarrel. But, in replying upon the language of Mr. Justice Cardozo in United States v. Swift & Co., 286 U.S. 106, 114 (1932), as authority for modifying this consent decree, the court below elevates the asterisk to the most potent of rules of law. The court omits from its quotation the Supreme Court's careful distinction between decrees which may and those which may not be modified. What the Supreme Court said and what the court below ignored was:

> "The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative."

Under this language, we submit, the consent decree in the instant case was beyond the court's power to modify.

The amended complaint attacked the legality of the 1957 elections and sought an order declaring them invalid and directing new elections under judicial supervision. The 1957 elections were either valid or invalid. If the former, the appellees had no right to the relief they sought; if the latter, they were entitled to have new elections held. The members' right to constitutional elections was, in Justice Cardozo's words, "fully accrued" and the facts upon which the case turned were "permanent" and completely "impervious to change". A judgment entered after trial would end the controversy one way or the other. If the facts showed that appellees' right had been violated, the court would declare the 1957 elections void and order new ones. If the facts showed otherwise, the court would dismiss their complaint. The consent decree was no less a final disposition of the controversy, as was recognized by the parties and the court when it was approved.[24] It held the 1957 elections valid, but to induce the Union to conduct new elections before 1962, as the constitution requires, it hung about the neck of the General Executive Board the millstone of the monitorship. Certain duties were placed upon the officers of the Union, for violation of which the court could apply contempt sanctions. For example, a refusal to give the Monitors staff help or a refusal to consult with them with respect to matters in which they had recommendatory authority would constitute a violation of the consent decree. The court would, of course, have jurisdiction to enforce the decree by punishing the violators for contempt. Other than its general jurisdiction to enforce the decree by contempt sanctions, the only jurisdiction retained by the court was "supervision and direction" of the Monitors in the performance of their "enumerated" duties. Under this retained jurisdiction, the court could see to it that the Monitors performed the tasks which the parties had agreed they should perform, but it could not assign to them additional powers or duties which the parties had not agreed they should have.

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[24] *Supra*, p. 9.

This consent decree is not like a decree entered in an anti-trust case to protect competition, where constantly changing economic conditions and relationships may require adjustments of the decree to accomplish its purpose. As was said of the decree in Swift & Co.:

> ". . . the passing of a decade has brought changes to the grocery business as it has to every other. The inquiry for us is whether the changes are so important that dangers, once substantial, have become attenuated to a shadow." 286 U.S. at 119.

A consent decree which is designed to right the wrongs growing out of a shifting situation may be modified if and when the situation shifts sufficiently to require it. But one which was entered as a remedy to an alleged wrong consisting of a completed act or set of acts may not be modified, simply because it later seems to one of the parties or to the court that a different remedy would have been more appropriate.

In Singer Mfg. Co. v. Seinfeld, 89 F. 2d 35, 37 (2d Cir. 1937), the court said:

> "The motion for a supplemental injunction was denied on the theory that a new suit was necessary and so given no consideration on the merits. Whether that disposition was correct as a matter of law depended upon whether it was sought to enlarge the scope of the original injunction or merely to make more clear and specific what had already been enjoined in order that its application, or the reverse, to new acts and situations might be made plain."

The court cited Armstrong v. De Forest Radio Telephone & Telegraph Co., 10 F. 2d 727 (2d Cir.), cert. denied, 270 U.S. 663 (1926), where it had earlier said, at p. 728:

> "It is not true that the object of a supplemental injunction is to amplify the original one; the object is not to amplify, but to specify, and

> apply the original injunction to actions and objects nonexistent when the case was decided. The inquiry is whether acts and things that have come into existence since decree would have been enjoined by that decree, had they then existed." /Emphasis in original./

What changed circumstances have arisen since the decree in the instant case? The Memorandum Opinion below leaves us in no doubt as to what the court conceived the changed circumstances to be, namely, that after the early period of the monitorship "the Teamsters ceased cooperation with the Monitors and refused or ignored the reasonable and relevant requests of the Monitors. The conduct of the Teamsters in such respect was in disregard of their obligations to afford good faith compliance with the reasonable and pertinent orders of recommendation issued by the Monitors." (J. A. 168.)

If all that happened after entry of the consent decree was, as the court said, that the appellants violated its terms, there was, of course, neither need nor basis for modifying the decree. The appropriate course, in such a case, would be to enforce the decree by contempt proceedings. To impose additional restraints upon appellants as a sanction for alleged violations of the original restraints is, under the Singer case, supra, "to enlarge the scope of the original" decree and, therefore, not a permissible modification.

A case rather closely in point is Osage Oil & Refining Co., v. Continental Oil Co., 34 F. 2d 585 (10th Cir. 1929), where the court set aside a modification of a decree originally entered in favor of the Osage Company in its suit to quiet title. The court said, 34 F. 2d at 588:

> "The decree in the suit to quiet title was in effect a contract of sale between the Osage Company and the Continental Company. It adjudged that the Osage Company should do certain things with reference to its title to the oil lease. The motion to modify the decree set up that the Osage Company had failed to perform the things enjoined upon it by such decree and whether the Osage Company had complied with the decree in respect to such matters present for determination. Such questions were not within the issues made in the suit to quiet title. They pertained to events which occurred subsequently to the decree. Issues not raised by the pleadings cannot be determined. /Citation./ A decree, in so far as it undertakes to decide issues not made by the pleadings, is void. /Citations./ A court is without jurisdiction to pass upon questions not submitted to it for decision. /Citations./ If the court were without jurisdiction to determine such issues at the original trial, it would seem to follow that it was without jurisdiction to reserve such issues for future determination."

Similarly, in the instant case, the consent decree was in effect a contract among the parties requiring the appellants to do certain things. The petitions to modify the decree alleged that the appellants had failed to do what was required of them. Whether or not the appellants had complied with the decree was the question presented by the petitions. Of course, that question was not within the issues made in the original suit; it pertained to events occurring after the decree. Obviously, the District Court would have lacked jurisdiction in the original suit to decide the question of whether or not the appellants had complied with a decree not yet made, and, lacking such jurisdiction, it could not reserve that question for future determination. The court was, therefore, without jurisdiction to modify the decree.

Applying the test of the Armstrong case, supra, the court must inquire whether the consent decree would have compelled appellants to obey the Monitors' orders and would have extended the Monitors' authority to all aspects of Union affairs, had it been known, when the decree was entered, that appellants would reject some of the Monitors' recommendations. To answer that question in the affirmative would be an absurdity, for such an answer would presuppose that the consent decree was not a compromise and not even an abject surrender, but rather a gratuitous outpouring to the appellees of more than they had asked for in their complaint. Moreover, the possibility that appellants might refuse to comply with the Monitors' wishes was contemplated by the parties and a proposal by the appellees that the order should provide for power to "require compliance" was specifically rejected.[25] Since the possibility of noncompliance "existed" when the decree was made and the parties specifically and consciously chose that compliance not be required by the order, there is no power now to modify the order to require such compliance.

What the position of the Monitors and the appellees really comes to is that in the light of their present conception of the situation, they wish they had made a different bargain from the one they made and embodied in the consent decree. Similarly, the position of the court below, as reflected by a fair reading of its Memorandum Opinion, is that, given a chance, it would have entered a different decree. But, as was said in Swift & Co., 286 U.S. at 119, the decree "whether right or wrong is not subject to impeachment in its application to the conditions that existed at its making. /The courts/ are not at liberty to reverse under the guise or readjusting."

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[25] See text at note 16 *supra*.

Even if the decree that was bargained for and agreed upon by the parties had turned out to be inadequate and inappropriate to the situation as the court below, the Monitors, or the appellees now see it, the law is that a bargain is a bargain. Even where the public interest is directly involved, good faith bargains are enforced. Where the Attorney General of the United States used poor judgment in consenting to a decree, the fact that the decree thereafter failed to give adequate protection to the public interest was not such a changed condition as to warrant modification of the decree. United States v. Radio Corporation of America, 46 F. Supp. 654, 656 (D.Del. 1942), appeal dismissed, 318 U.S. 796 (1943). In the latter case the court said:

> "Since these consent decrees are based upon an agreement made by the Attorney General which is binding upon the Government the defendants are entitled to set them up as a bar to any attempt by the Government to relitigate the issues raised in the suit or to seek relief with respect thereto additional to that given by the consent decrees. /Citations./ This is a very real benefit of which they would be deprived were the Government's motion to be granted."

Similarly, an enforcement decree entered on an order made by the National Labor Relations Board may not be modified simply because "the relief originally granted was not appropriate to the situation as the Board now conceives it." International Union of Mine, Mill & Smelter Workers v. Eagle-Picher Mining & Smelting Co., 325 U.S. 335, 339 (1945).

If hindsight is unavailable to the United States as a basis for modifying a bargain which it has entered into as a party to litigation and which it now conceives to disserve the public interest, we submit, as an a fortiori proposition, that a party to a purely private litigation is bound by a consent decree made and entered in good faith.

B. Even If This Consent Decree Were Of The Type Which the District Court Has Power To Modify, The Modification Appealed From Was Without Basis.

To show how untenable the District Court's modification of the consent decree is we suggest in this subdivision of our argument that it be assumed that this consent decree is of the type as to which there is a judicial power of modification. Even making that assumption, we submit, this modification cannot be sustained.

1. There Are No New and Unforseen Conditions Calling for a Change.

In Swift & Co., Mr. Justice Cardozo said, 286 U.S. at 119:

> "Nothing less than a clear showing of grievous wrong evoked by new and unforseen conditions should lead us to change what was decreed . . . with the consent of all concerned."

The allegedly changed condition upon which the order appealed from was based is that the appellants refused to comply with certain orders of the Monitors. But, as we have shown, this refusal, far from being an "unforseen" condition, was actually within the contemplation of the parties when they rejected a proposed provision requiring compliance with such orders.

The kind of changed condition that would support a modification of a consent decree is illustrated by Coca Cola Co., v. Standard Bottling Co., 138 F. 2d 788 (10th Cir. 1943). In that case a consent decree had been made in 1925 enjoining the appellee, among other things, from selling any drink bearing the word "cola" in its name. Many years later, after the appellant, through numerous court decisions, had lost the exclusive right to use the word "cola", appellee asked to be relieved of this aspect of the injunction. The court found that, by reason of the changed circumstances, appellee was the only person who could not legally sell "cola" drinks. Since appellant was in any event not protected against the competition of numerous other "cola" sellers, the effect of the injunction was to injure appellee without benefit to appellant. The court therefore concluded, relying on Swift & Co., that equity required modification of the injunction. The modification of the Coca Cola consent decree was clearly within the rule of Swift & Co., for, when the decree was made, the parties assumed that the appellant had and would continue to have an exclusive right to use "cola" in its name. The freeing of the name for use by all the world was obviously a "new and unforseen" condition evoking "grievous wrong" to the appellee. The contract between Coca Cola and the instant case is too clear to require discussion. The court should modify an order when not to do so "would result in an outrageous miscarriage of justice, not contemplated by the court or by the parties in the entry of the order." Webster Motor Car Co. v. Zell Motor Car Co., 234 F. 2d 616, 619 (4th Cir. 1956). But it is an abuse of power to modify an order to avoid a result which is neither unjust nor uncontemplated, but merely, by hindsight, unpalatable to one of the parties. Even if the appellees in the instant case could have obtained, through completing the trial, a decree conferring mandatory powers upon the Monitors and authority to supervise general Union operations--which we submit was impossible both under their complaint and under the law. "/t/hey chose to renounce what they might otherwise have claimed, and the decree of a court confirmed the renunciation and placed it beyond recall." United States v. Swift & Co., 286 U.S. at 119.

2. The Modification Thwarts Rather Than Effectuates the Basic Purpose of the Consent Decree.

In Chrysler Corp. v. United States, 316 U.S. 556, 562 (1942), the court said:

> "We think the test to be applied in answering this question /whether a particular modification of a consent decree is an abuse of the power of modification/ is whether the change served to effectuate or to thwart the basic purpose of the original consent decree."

A modification which is not consistent with the original consent decree is, therefore, an abuse of the court's power to modify. United States v. Radio Corporation of America, 46 F. Supp. 654 (D.Del. 1942), appeal dismissed, 318 U.S. 796 (1943).

The application of this rule is exemplified in Utah Construction Co. v. Salmon River Canal Co., 85 F. 2d 769, on rehearing, 86 F. 2d 326 (9th Cir. 1936). A dispute over water rights was resolved in that case by a decree authorizing appellant to divert a certain amount of water from the channel of the Salmon River. The court retained jurisdiction "generally to make such orders as may be reasonably necessary to give effect to the [illegible] decree. . ." Some years later the court issued an order that the channel of the river must remain open. On appeal, it was held that, since nothing in the original decree restrained appellant from erecting a dam in the river for the purpose of diverting water, the later order was inconsistent with the decree and, therefore, invalid. It would seem, therefore, that a modification, to be permissible, must bear a close relation to the specific design of the original decree. It cannot be justified, as is sought to be done here, by relating it to some broadly generalized and highly debatable psychological predicate of the decree.

What was the basic purpose and design of the instant consent decree? It grew out of a suit seeking to frustrate the results of the 1957 elections and to obtain new elections under the control of persons other than the members of the Union. The compromise embodied in the decree was that the results of the 1957 elections be "provisionally" recognized, until a new convention should be held, and that the control of all Union affairs, including elections, not be given over to outsiders, but remain in the hands of the officers elected in 1957 and "provisionally" installed in office, those officers to counsel with and receive recommendations from the Board of Monitors in certain enumerated areas of Union affairs.

How, consistently with this basic purpose and design, can there now be a modification to the effect that the Monitors may impose their will upon the Union officers and do so, moreover, in areas of Union affairs not enumerated in the decree? Monitor (and appellees' counsel) Schmidt finds little difficulty in answering this question. In his Supplemental Report to Judge Letts for the period up to May 27, 1958, he announces as his private construction of the consent decree, not shared by Judge Cayton or Mr. Wells, the other two Monitors, that:

> "The preliminary injunction of October 23, 1957, was subject to reinstatement on application by plaintiffs if defendants, as 'provisional' officers, substantially breached any of the conditions or obligations imposed by the Consent Order. The amended Constitution as it emerged from the Seventeenth Convention was put into effect 'provisionally.'"[26]

This notion of Mr. Schmidt's seems to have been adopted by the court below, which states in its Memorandum Opinion of December 11, 1958:

> ". . . the individual defendants were permitted provisionally to assume the duties of the offices to which they have been elected.
>
> "The language of the consent order carries the meaning that such permission to assume office is temporary and granted in view of existing known conditions and of assumed obligations. By definition and by nature a provision of this kind is subject to change." (J. A. 168.)

Both Mr. Schmidt and the District Court seem to have as little difficulty making "provisional" mean "conditional" as they had making "recommend" mean "order".

There is no question that the 1957 constitution was only "provisionally" effectuated by the consent decree and that the officers elected at the 1957 convention were only "provisionally" installed. But the draftsmen of the decree, in using the word "provisionally", must be presumed to have chosen it with as great care as they chose the word "recommend". "Provisional" is not an infrequently used word in legal circles. Lawyers understand it to mean: "Temporary; preliminary; tentative; taken or done by way of precaution or ad interim." Black, Law Dictionary at 1389 (4th ed. 1951); see De Haro v. United States, 5 Wall. 599, 628 (1867). Mr. Schmidt and the District Court choose to read "provisional" as "conditional", which lawyers understand to mean: "That which is dependent upon or granted subject to a condition." Black, op. cit. supra, at 367. The obvious obstacle to such a reading is that, if the tenure of the officers were intended to be dependent upon some condition, the decree would have stated the condition. It would have been very simple, for example, to say that the officers should be removed if they failed to cooperate with the Monitors, if that were what the parties intended. The very absence of any such condition demonstrates that the parties did not so intend.[27/] In giving the appellants provisional tenure in office, the draftsmen of the decree gave them a status analogous to that of a "provisional government", understood in the law to be one "temporarily established in anticipation of and to exist and continue until

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[26] *Supra* note 3 at 169-170.

[27/] It is inconceivable that the draftsmen of so detailed and specific a decree could have intended that, many months after the passage of authority from the old officers and General Executive Board to the new, the new Board and officers should be removable by the court, and yet not have made any provision whatsoever concerning succession or replacement. It is interesting to note that the Monitors, in their opposition to appellants' motion for stay, filed herein on March 16, 1959, although they still assert that the officers and the General Executive Board were only "conditionally" seated, no longer suggest that they are removable.

another (more regular and more permanent) shall be organized and instituted in its stead." Id. at 1389; Chambers v. Fisk, 22 Tex. 504, 535 (1858); 30 C.J.S., Government, p. 967. It was anticipated that an administration to serve for a full five-year constitutional term would be established by a convention soon to be held. And, as we have shown, there was every reason for the parties to believe that the desire to be rid of the monitorship would impel the General Executive Board to call a new convention as soon as permissible under the decree. But there is not a single word in the decree to suggest that the officers' tenure was dependent upon a condition or was terminable by any event other than the election and installation of new officers in their stead through the process of a new convention, any more than a provisional government is terminable by anything other than the installation of a new government. Even if the appellants were to violate the consent decree, there is no provision for rescission and reinstatement of the status quo ante. The court, under its contempt powers, could assure enforcement.

A purported modification of this consent decree resting on a theory that the Monitors have mandatory powers to remold the Union closer to their hearts' desire and that, until they have had their every wish gratified, the General Executive Board may not call a convention is flagrantly inconsistent with the original decree. It gives the appellees more than they sought by their complaint. It deprives the appellants of the benefits bargained for and obtained in the compromise. It removes from the members of the Union the control of their own affairs and places it in the hands of outsiders with virtually dictatorial powers--and this in the name of democracy. It represents a judicial arrogation of power over the internal affairs of a voluntary association greater than has ever been asserted under our system of jurisprudence. We think that, even if this court should conclude that the District Court had power to modify the consent decree, it would nevertheless hold that the order appealed from goes much too far in supplanting the constitutional administration of the Union by his Board of Monitors, for his order amounts to such "gratuitous interference with the normal functions of labor organizations [as the National Labor Relations] Act and the Norris-La Guardia Act were designed to prevent."[28] Green v. Obergfell, 73 App. D. C. 298, 320-21, 121 F. 2d 46, 68-69 (1941). See Chafee, The Internal Affairs of Associations Not for Profit, 43 Harvard L. Rev. 993, 1027 (1930):

> "The health of society will usually be promoted if the groups within it which serve the industrial, mental, and spiritual needs of citizens are genuinely alive. Like individuals, they will usually do most for the community if they are free to determine their own lives for the present and the future. A due regard for the corresponding interests of others is desirable, but must be somewhat enforced by public opinion. Legal supervision must often be withheld for fear that it may do more harm than good."

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[28] We do not, of course, make the "absurd" argument attributed to us at p. 22 of the Monitors' opposition to our motion for stay, filed herein on March 16, 1959, that the District Court "has violated" these acts. All we say, and we think it is enough, is that the order appealed from is so sweeping as to be in conflict with the policy against gratuitous interference with the normal functions of a labor union, a policy adopted by Congress and embodied in these statutes.

3. The Modification Violates Appellants' Rights to Due Process of Law.

The modification of the consent decree contains a built-in due process defect.

The question whether the modification is permissible would not arise unless it were first determined that the original consent decree did not, by any fair construction, provide what is now provided by the modification, for otherwise there would be no occasion for modifying it.

The Court, must, therefore, assume, in considering whether the District Court could properly modify the consent decree, that the parties' bargain, as originally embodied therein, was that the elected officers would run the Union, with Monitorial counsel and recommendations, and that, after a year, the General Executive Board would be free to call a new convention, thereby terminating the Monitorship. The question then arises by what authority the District Court may impose upon appellants restrictions not only not consented to, but altogether inconsistent with those to which they did consent.

Any judicial action, unless consented to by the parties, must rest upon a factual basis which justifies it. Here, to be sure, there were twenty-two days of trial in which the appellees adduced evidence purporting to support the allegations of their complaint. But before any occasion arose for the appellants to present their defense, the case was compromised by the entry of the consent decree. Appellants do not for a moment concede that the evidence introduced by the appellees tended to prove their case and justify the relief they sought. But even if it were conceded that appellees' evidence tended to prove their case, as the court below, on we know not what basis, says was "tacitly" understood, our system of justice would require appellants to be given their turn at bat before any judicial action could be based on appellees' showing. By entering into the compromise, appellants did not waive their right to present evidence to refute appellees' evidence. It simply became unnecessary for appellants to put in their defense. It follows, therefore, that, when the District Court undertook to undo the compromise, it was required to restore to appellants their opportunity to prove that appellees are entitled to no relief at all, let alone the sweeping relief the court undertook to grant. When a baseball game is interrupted by rain in the middle of an inning when only one side has been at bat, the runs scored by that side do not count. When a trial is interrupted with only the plaintiff having presented his evidence, the evidence does not count.

Certainly the fact that appellants consented to the entry of a decree is no warrant for imposing upon them restraints to which they did not consent. As Mr. Justice Frankfurter said in Ford Motor Co. v. United States, 335 U.S. 303, 322 (1948):

> "The Government has not sustained the burden of showing good cause why a court of equity should grant relief from an undertaking well understood and carefully formulated. If the Government seeks to outlaw possible arrangements by Ford with a finance corporation, it must establish its case in court against Ford. . .and not draw on a consent which by its very terms is not available."

So, in the instant case, by the well understood and carefully formulated undertaking of the parties, as embodied in the consent decree, the affairs of the Union were to be administered by its elected officers, with the Monitors given a narrowly circumscribed counseling role to be exercised until a new convention should be held on the call of the General Executive Board. If the appellees now seek to impose additional restraints against appellants or to give the Monitors additional powers, they must establish their case in court "and not draw on a consent which by its very terms is not available."

III. The Order Appealed from, to the Extent That It Requires Compliance with Future "Reasonable and Relevant" Orders of the Board of Monitors, is Void for Uncertainty.

Paragraph 2 of the order appealed from provides that the appellants "shall comply promptly and fully with all future Board of Monitors' Orders of Recommendation that are reasonable and relevant to the basic purposes of the Consent Decree". J. A. ~~280~~ 381

This provision, we submit, flatly violates the requirement of Rule 65 (d), F.R. Civ. P. that an "order granting an injunction .....shall be specific in terms...." Professor Moore observes:

> "Loose injunctive orders are neither easily observed nor strictly enforceable, and are apt to be oppressive. Hence Rule 65 (d) . . . provides that every restraining order and injunction be specific in terms; and describe in reasonable detail, and not by reference to the complaint or other document, the prohibited act or acts . . . . .Thus it compels preciseness in the form and scope of restraining orders and injunctions in order to appraise the party

> enjoined of the course of conduct which is prohibited; and to avoid undue restraint on parties to the action or others affected by the restraint. 7 Moore, Federal Practice, 1666-67 (2d ed. 1955).

It is perfectly obvious that, with respect to "Orders and Recommendations" of the Monitors not yet issued, the appellants are not apprised by the order appealed from what conduct is permitted to them and what is forbidden. It is just as obvious, as a matter of fact, that the District Court itself does not know the scope of its order, for it cannot know what "Orders of Recommendation" the Monitors will choose to issue in the future or the extent to which any of them will be "reasonable and relevant".

As the Supreme Court said in Hartford-Empire Co. v. United States, 323 U.S. 386, 410 (1945):

> "The decree must not be 'so vague as to put the whole conduct of the defendants' business at the peril of a summons for contempt;' enjoin 'all possible breaches of the law;'" . . . /Citations./

Even as specific an injunction (by comparison with the instant order) as one prohibiting "monopolizing" first- and second-run films was held too vague in Schine Chain Theatres v. United States, 334 U.S. 110 (1948), the Court saying, at p. 126:

> "...we think the public interest requires that a more specific decree be entered on this phase of the case. The precise practices found to have violated the act should be specifically enjoined."

The instant order does not provide that the appellants must obey unreasonable orders of the Monitors, only that they must obey those that are "reasonable and relevant". If an order which they disobey turns out to be unreasonable or irrelevant, they are not in jeopardy. But they are at their peril in judging what is reasonable and relevant. Certainly a statute placing them in such peril would be invalid under the due process clause of the Fifth Amendment. United States v. Cohen Grocery Co., 255 U.S. 81 (1921); Small & Co. v. American Sugar Refining Co., 267 U.S. 233 (1925). To try to enforce such a statute, said the Supreme Court in the Cohen Grocery case, 255 U.S. at 89, "would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of court and jury". Similarly, to try to enforce the instant order would be the exact equivalent of an effort to carry out an order requiring the doing of acts which would be held "reasonable and relevant" in an eventual contempt proceeding. Such an order, like one enjoining "all possible breaches of the law", is invalid. Swift & Co. v. United States, 196 U.S. 375, 396 (1905). The concepts of fairness making up due process are as indispensable in the decrees of courts as in the acts of legislatures.

IV. The Order Appealed from, to the Extent That it Confers upon the Board of Monitors Power to Issue Orders Required to be Obeyed on Pain of Contempt, is an Invalid Delegation of Judicial Authority.

The requirement that appellants obey future orders is, as we have shown, void for uncertainty. It would be void even if the future orders were issuable by the court itself, rather than by the Monitors. The delegation of the ordering power to the Monitors makes the order appealed from doubly invalid. Just as a standardless statute making unlawful all acts detrimental to the public interest would be an invalid delegation to the courts of legislative power "in the very teeth of the Fifth and Sixth Amendments and of other plainly applicable provisions of the Constitution", Cohen Grocery Co. v. United States, 255 U.S. at 92, this standardless order is an invalid delegation to the Monitors of judicial power.

The result of such delegation is that the Monitors, rather than the court, exercise judgment and order action and that the appellants risk punishment by the court for contempt if they do not obey orders issued by the Monitors. This feature of the order appealed from makes appellants' situation altogether unprecedented in the law. The concept of punishment for contempt for violation of a judicial order is, of course, well-established in the law. It is, indeed, the recognized method of enforcement of orders of administrative agencies. When the National Labor Relations Board makes an order, for example, and it is not obeyed, the Board petitions a court for an order of enforcement. The violator is not guilty of contempt for violating the Board's order, but only for violating the court's enforcement order. 29 U.S.C. Sec. 160 (e). Similarly, for the Securities & Exchange Commission, see 15 U.S.C. Sec. 774 (c). No one would suggest that an administrative agency could obtain a court order for enforcement of its future "reasonable and relevant" commands. The order appealed from, as we read it, authorizes the Monitors to command action by the appellants and subjects the appellants to contempt sanctions for disobedience. It makes no provision for an application by the Monitors to the court for a compliance order before contempt sanctions may be imposed. As we read the order and the Memorandum Opinion, such pre-contempt compliance proceedings are dispensed with.

Referring to past "orders of recommendation" issued by the Monitors, purportedly pursuant to the authority conferred by the consent decree, and not complied with by the appellants, the District Court stated in its Memorandum Opinion:

> "...if they [the appellants] doubted the reasonableness of such recommendations or doubted that the recommendations were pertinent to the basic purposes of the order, they had recourse to the Court. Upon such matters of disagreement, recourse has always been available to the Court for its ruling and determination of the existing controversy." J. A. 167.

Then, after holding the various disputed orders of recommendation to be reasonable and valid, the court added:

> "Now that the views of the Court respecting many matters in dispute are known the Court will expect prompt compliance with such orders of recommendation which have been made and such reasonable orders of recommendation as may be made by the Monitors touching the matter of housecleaning and compliance with all provisions tending to assure that the next convention will be organized and conducted honestly in such a manner as to be free of control by labor bosses while promoting in all respects the interest of the dues paying members."
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> "Remedies are not lacking in our judicial processes if the orders of the Court are violated, disregarded or ignored. As of now they need not be mentioned or considered." J. A. 170-171.

In the order appealed from the court "implemented the foregoing language by ordering that appellants 'shall comply promptly and fully with all future Board of Monitors Orders of Recommendation that are reasonable and relevant to the basic purposes of the Consent Decree'".

By (1) distinguishing between the situation as it existed prior to the Monitors' petition and that which prevails "/n/ow that the views of the court respecting many matters in dispute are known", (2) ordering prompt and full compliance with future "Orders of Recommendation", and (3) openly threatening contempt penalties, the District Court at least by clear implication, has placed the appellants at their immediate peril if they fail to obey any order issued by the Monitors. 28a/

The question which suggests itself is whether it was proper for the court to give the Monitors power to make orders in the nature of injunctions. The question, we submit, also answers itself -- in the negative.

In the opposition filed on behalf of Judge Letts in Cunningham et al. v. Letts, No. 14,889, a prohibition proceeding filed in this Court by one of the original plaintiffs in the instant action and by certain others, the status of the Board of Monitors is likened to that of masters appointed under Rule 53,

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28a/ Mr. O'Donoghue argued to this Court that he reads the order to mean that appellants must petition the District Court for relief from any "Order of Recommendation" they think improper and that only if they persist in disobedience after the District Court issues a specific order of compliance are they guilty of contempt. *Supra* note 17 at 12-13. There are two defects in his argument. First, there is nothing in the consent decree to make the appellants perpetual petitioners at the bar of justice. Secondly, the order does not say what Mr. O'Donoghue says. As to the latter defect, he says it is cured by treating Conclusion of Law No. 12 (J. A. 275) as incorporated in the order. *Supra* note 17 at 13. This, however, would violate Rule 65 (d), F.R.Civ. P., which, as Professor Moore says, requires that what is ordered must be stated specifically in the order and not by reference to any other document. See *supra*, p. 55.

F.R. Civ. P. These Monitors are, of course, not masters, because they have been appointed not to take evidence and make findings, but rather, as we have shown, to exercise a substantially advisory function. But, accepting Judge Letts' analogy for the purpose of argument, we challenge the appellees to show that a master appointed under Rule 53 or the predecessor equity rules[29] could be given by the court the powers which have now been given these Monitors.

The only case we have found where even faintly similar powers were sought to be exercised is In re Gordon, 250 Fed. 798 (S.D. Calif. 1918). A rule had been issued to show cause why one Brown should not be punished for contempt for violating an order in the nature of an injunction made by a special master in a receivership proceeding. The court discharged the rule, saying, 250 Fed. at 799:

> "Diligence of counsel has failed to bring to the attention of the court a single instance where a court of equity or the Chancery Court in England has thus successfully or otherwise attempted to clothe a special master with the powers asserted herein. There is no federal statute to which my attention has been directed that purports to grant to a special master such a power; on the contrary, the plain implication would seem to be (2 U.S. Comp. Stat. 1239, 1241, 1243a) that only certain courts or the judges thereof are vested with this important function. I am therefore constrained to conclude, after examination of the precedents, that there is no authority in a special master per se, and none can be granted to him by the court, to make an order in the nature of an injunction."

The Supreme Court recently pointed out, in La Buy v. Howes Leather Co., 352 U.S. 249, 256 (1957):

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[29] See Notes of Advisory Committee on Rules with respect to Rule 53.

> "The use of masters is 'to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause,' Ex parte Peterson, 253 U.S. 300, 312 (1920), and not to displace the court."

Courts must avoid "an abdication of the judicial function . . . ." Ibid. ". . . /I/t is the duty and the function of the Court, and the Court alone, to enter judgment, or to make appropriate orders, based upon the information secured and findings arrived at by the special master." In re Gordon, 250 Fed. at 800.

We are not unaware, as was pointed out in Judge Letts' opposition in Cunningham et al. v. Letts, referred to supra, that "when the parties consent to the reference of a case to a master or other officer to hear and decide all the issues therein, and report his findings, both of fact and of law, and such reference is entered as a rule of the court, the master is clothed with very different powers from those which he exercises upon ordinary references, without such consent...." Kimberly v. Arms, 129 U.S. 512, 524 (1889). The difference when the master serves by consent is that his findings may not be disregarded in the court's discretion. Ibid. We have seen no case, however, holding that the master, when he serves by consent, may issue injunctive orders as if he were a judge. Moreover, in the instant case there was never a reference to the Monitors, by consent or otherwise, "to hear and decide all the issues". Indeed, the issues were all obviated by the compromise. Furthermore, even if there were a consent by the parties in the instant case that the Monitors have the status and duties of masters, the consent decree, as we have already shown, cannot be construed to have given them the powers to issue orders. It is from the court's modification of the consent decree, not from the parties' consent, that the Monitors' power to issue orders springs. And, since the court may not thus abdicate its judicial function, the Monitors cannot be given the power to make orders in the nature of injunctions.

V. The Principle Findings and Conclusions Upon Which the District Court Rested the Order Appealed from are Unsupported by the Record.

At the request of the District Court, Mr. O'Donoghue submitted 75 pages of findings and conclusions. The court, ignoring the appellants' objections, both general and specific(J. A. 177) adopted those findings and conclusions without changing a single word. (J. A. 206) As pointed out in the objections above referred to, the findings and conclusions as proposed by Mr. O'Donoghue, not only did not fairly reflect the record, but in numerous instances glaringly and even ludicrously contradicted it. [30]

Considerations of time and space do not permit us to expose here the deficiencies of all the findings and conclusions. We shall confine ourselves, therefore, in this brief to the series of findings and conclusions which are urged as justifying the District Court's undertaking to destroy the compromise embodied in the consent decree and to substitute for it a new regime with the Monitors clothed with authority to invade every area of Union affairs and to issue orders required to be obeyed. That series of findings and conclusions purports to establish that the appellants have engaged, in bad faith, in a consistent course of frustrating the work of the Monitors. See, for example, Findings 5, 6, 12, 15, 21, 23, 24, 26, 32, 38, 46, 47, 61, 64, 68, 73, 78, 85, 92, 93, 118, 122, 123, 126, 128; Conclusion 19. (J. A. 208 to 278, passim).

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[30] See, e.g., Finding No. 18 (J. A. 216) referring to an alleged attempt by an officer of Local 929 "to bribe an official of Horn & Hardart Company." As pointed out in appellants' objections, this finding was grossly improper for two reasons: (1) it found as a fact that there had been an attempt to bribe, while the record shows only that such an attempt had been charged; and (2) it reverses the parties to the alleged bribe. (J. A. 183)

We shall show here that those findings and conclusions are in violent conflict with the evidence. We shall show that the relationship between the Union and the Monitors has for the most part been marked by complete cooperation, that there has been very substantial compliance by the Union with the Monitors' desires, and that, to the extent that there was non-compliance, it sprang from reasonable causes altogether consistent with good faith. It will follow from our showing that what the District Court has done is to ignore the remarkable record of Union-Monitor agreement and cooperation and to equate every instance of disagreement to an evidence of "bad faith", paying no regard whatever to the reasons for such disagreement.

A. The Record as to Union Cooperation With the Monitors.

The District Court noted in its Memorandum Opinion that "in the early days of the monitorship the Teamsters gave substantial compliance" to the Monitors. (J. A. 167) This is the most grudging of understatements. Reporting to the District Court on the Monitorship under his chairmanship, Judge Cayton noted that the Monitors had "had the enlightened cooperation of the International Union."[31] That report showed also that there had been Union-Monitor discussions regarding "broad questions of policy, such as rules to assure fair trial procedures and fair and honest elections", and that the Monitors unanimously felt that substantial progress had been made in effectuating the purposes of the consent order.[32/] The report also showed that Board of Monitors procedures had been published in the first available issue of the Union magazine;[33/] it showed that the Monitors had found the 1957 constitution "to be a great improvement in many respects" over the 1952 constitution;[34/] it showed that the Union was in complete compliance with paragraph 6 of the consent order (J. A. 60), relating to conflict of interest;[35/] it showed that the Monitors, after a review of the Union's accounting and financial procedures, were "generally impressed with the careful and business-like manner in which these functions were performed";[36/] it showed that the Monitors thereafter engaged Price, Waterhouse & Co. to make a survey of financial procedures and controls and advise on the necessity of any changes and that the survey had been made "with the full cooperation of the officials of the Union";[37/] it showed that, consonant with paragraph 7 of the consent order (J. A. 61), the Union had embarked on a program of restoring trusteed locals to

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[31] Supra note 3 at 45.

[32/] *Supra* note 3.

[33/] *Id.* at 3.

[34/] *Id.* at 4.

[35/] *Id.* at 5.

[36/] *Ibid.*

[37/] *Id.* at 6.

autonomy and that, of the 109 trusteed locals inherited from the former Beck administration, 41 had already been restored to autonomy and 21 more were in the process of restoration.[38]

When Judge Cayton was succeeded as chairman by Mr. O'Donoghue, the cooperative relationship which had been developed continued to bear some fruit and there were numerous instances in which the Union met the Monitors more than half-way.[39] The Union established a revolving expense fund for the Monitors.[40] It approved employment by the Monitors of a consultant and staff employees.[41] The Price Waterhouse survey, begun under Judge Cayton's chairmanship, was completed and a report submitted which found the Union's accounting records "complete, orderly and well-kept" and its responsible personnel "highly competent" and having "a high degree of interest in and earnestness about their work."[42]

But on May 27, 1958, at the first meeting of the Board of Monitors under Mr. O'Donoghue's chairmanship, a harbinger of future difficulties was introduced. The Monitors, for the first time, began to speak of "orders" to be issued to the Union and resolved that thereafter, instead of the personal contact the Monitors had maintained with the Union, all "orders or requests" would be in writing and in certain instances would specify compliance dates.[43/] "Orders of Recommendation" began to be issued on ex parte complaints by members of the Union, sometimes even without prior consultation with the Union.[44/] Personal contact and the opportunity for advice or consultation was further minimized on June 27, 1958, when the Board of Monitors moved from the offices allocated to it in the Teamsters International Building, to the offices of Mr. O'Donoghue in the Tower Building.[45/] Despite these significant changes in the atmosphere of Union-Monitor relations, however, the Union continued to make good faith efforts to comply even with orders of recommendation and in large part did comply to the complete satisfaction of the Monitors.[46/]

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[38] *Id.* at 7-8.

[39] *Id.* at 11-42.

[40] *Id.* at 11.

[41] *Id.* at 12; (J. A. 544). To date the Union has been billed and, for the most part has already paid, about $190,000.00 for various Monitor fees and expenses.

[42] *Supra* note 3 at 21.

Nor, as the District Court seems to have implied in its Memorandum Opinion (J. A. 167), can the orders of recommendation with which the Union complied be written off as inconsequential or as involving no controversial aspects. Orders of Recommendation Nos. 1 and 3, for example, dealing with several persons who had been expelled from a local in Alaska, required that they be

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[43/] Id. at 13.

[44/] See, e. g., Monitor Wells' dissents to Orders of Recommendation Nos. 20 and 21. (J. A. 345, 350)

[45/] Supra note 3 at 11.

[46/] Aside from the ten orders of recommendation listed in his Petition for Construction, Reformation and/or Modification (J. A. 64), Mr. O'Donoghue conceded that all of the orders of recommendation had been complied with. (J. A. 533, 548).

reinstated pending completion of intra-union appeals. Although the action required seemed expressly forbidden by the Union Constitution,[47] the General President complied (J. A. 532), because of suggestions that the expulsions might be construable as reprisals within the meaning of paragraph 13 of the Consent Order. (J. A. 531) By Order of Recommendation No. 13 (J. A. 448), the Monitors required that there be no commingling of the funds of two Alaska locals which had been merged. The Union, although taking the position that the merger was altogether proper and desirable, acceded to the Monitors' demands to the extent of working out an arrangement whereby pro rata shares of the funds would be distributed to the two locals if the merger were ultimately set aside. This arrangement was satisfactory to the Monitors. (J. A. 449).

From the whole record, therefore, it is beyond question that, but for the ten orders of recommendation which were the basis of the Monitors' claim of non-compliance, the Union not only tried, in good faith, to satisfy the Monitors, but actually succeeded in doing so. We come now to what the record shows concerning the orders of recommendation which are claimed to have been disobeyed in bad faith.

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[47] Article XII, Section 2(b):

> "Pending any appeal, the decision appealed from shall remain in full force and effect."

Article XII, Section 9(c):

> "Whenever a decision is handed down by any trial or appellate body and an appeal is taken, such decision shall stand and remain in full force and effect until reversed by a higher body."

B. The Record as to Non-Compliance With Monitors' Orders of Recommendation.

The first of the Orders of Recommendation as to which the District Court found appellants guilty of bad faith was No. 4. In that order, the Monitors, on the basis of certain testimony before and allegations by the Senate Select Committee on Improper Activities in the Labor or Management Field relating to financial wrong-doing by the officers of Local 107 (J. A. 477), recommended that the General President institute proceedings to place the local in trusteeship under the provisions of Article VI, Section 5(a) of the constitution. (J. A. 331) The Monitors also asked that a public member be placed on the hearing panel. This was a substantial departure from Union practice since never before had a complete "outsider" sat on a hearing panel.[48] (J. A. 534) The proposed hearing was delayed for two months while Price Waterhouse, at Monitor request, was reviewing all the available books and records of the local union. When the Price Waterhouse survey was finished, a panel, including a public member, was sent to Philadelphia, but was confronted with a state court order enjoining the proposed hearing. (J A. 536) The injunction thus procured by Local 107 had been opposed by counsel for the International. (J. A. 536) The grounds urged by the local in support of the injunction were the impropriety of the panel and, more important, the fact that the local's books and records, necessary to a proper defense particularly in a case involving alleged financial irregularities, were still in the possession of the Senate Select Committee. To expedite matters, the Union retained counsel to seek return of the books and records from the Committee, but, although he went so far as to bring suit against the Committee,[49] his efforts have been unavailing. (J. A. 537)

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[48] The only non-members who have ever sat on hearing panels have been persons substantially in the Union "family", e. g., House Counsel or International Economist. (J. A. 534).

Another "bad faith" finding arises from the failure of the Union to "order" a Price Waterhouse audit of three local unions. By Orders of Recommendation Nos. 11 and 12, the Monitors had recommended that Price Waterhouse be authorized to make an audit of Local 245, 808 and 295. The locals balked at having their books audited by this outside agency. International officers requested, and then instructed, the locals to cooperate with Price Waterhouse in the audits. But the locals persisted in their refusal.[50] The "bad faith" charged to the Union in this connection is that it refused to resort to the coercive power which the consitution gives it over its locals.[51] Since the Union, which is a party to the consent decree, was, by its view of the decree, not compelled to accept dictation from the Monitors, it was not unreasonable for it to take the position that it was not obligated to use its coercive powers to compel the locals, which are not parties to the decree, to accept such dictation. The Union's position was all the more reasonable in view of the declaration by the Monitors in their Initial Report to the District Court that:

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[49] Civil Action No. 188-58, United States District Court for the District of Columbia; Nos. 14,838 and 14,858 in this Court.

[50] Arrangements for these audits are now being made pursuant to a stipulation made by International counsel during the hearing. (Tr. 338)

[51] Article X, Section 11 (a):
"Any organizer or officer of the International Union may be delegated, instructed and empowered by the General President or General Secretary-Treasurer to audit or to employ auditors to audit the books of any Local Union or Local Unions."

> "In the event there should not be compliance ....The Board of Monitors will request instructions from the Court...." 52/

It can hardly be said that a determination by the Union to allow a questionable proposition to be settled by the District Court, in accordance with this declaration, rather than to apply coercive power to the locals, was a token of "bad faith". Moreover, by the time the issue arose as to whether or not the Union was sufficiently complying with this Order of Recommendation (and several others, as well), the Board of Monitors itself, in its amendment to the petition for construction and in its memorandum in support thereof, had brought into question the validity of the consent order. (J. A. 90, 101) Arguably, they could have claimed that the Union should comply fully with every demand they saw fit to issue under the consent order, even though they themselves were challenging the order's validity. But it is preposterous for them to shout "bad faith" because the Union thought otherwise.

Order of Recommendation No. 16 (J. A. 312) is the first of three so-called "disciplinary orders" which are in controversy. By this Order of Recommendation, charges were to be preferred

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52/ *Supra*, note 3 at 38.

against International Vice-President Owen B. Brennan, again based upon testimony before the Senate Select Committee. The order provided that the charges were to be preferred on behalf of the International, but not by General President Hoffa; he was to be disqualified from any participation in the case. It also required that one of three named counsel be employed to "advise" the charging party. The disqualification of the General President as charging party bordered on the inane, since, as charging party, he would automatically have been disqualified from participating in the hearing.[53] As to special counsel, the constitution is explicit with regard to the defense[54] and the same provision has always been applied to the prosecution. (J. A. 387). This point, when raised with the Chairman, was brushed aside as of no consequence. (J. A. 385) The Union's refusal to violate its own constitution can hardly justify a charge of "bad faith."[55]

53/ Article XVIII, Section 1. (a) "...If the member charged or preferring the charges is a member of such Board then the president of the Local Union shall appoint a disinterested member as a substitute."

54/ Article XVIII, Section 1. (b) "...He may select only a member of his Local Union to represent him in the presentation of his defense."

55/ Also, in "Order of Recommendation No. 16", the Monitors requested a Price Waterhouse audit of the Michigan Conference Welfare Fund. Since this Fund is not under the jurisdiction of the Union (J. A. 557), appellants were powerless to comply with the request.

Order of Recommendation No. 17, the second of the "disciplinary orders", required that Samuel Feldman, a business agent of Local 929, be charged and tried and that he be suspended pending trial.[56/] (J. A. 320) At the time of the hearing below, the charges had already been brought, Feldman had been suspended and the trial was under way.[57/] (J. A. 557-59)

The third "disciplinary order", Order of Recommendation No. 19, called for the charging, trial and pre-trial suspension of Glenn Smith and H. L. Boling of Local 515. (J. A. 324) A Supplemental Order of Recommendation asked the General President to assume original jurisdiction of charges already preferred at the local level. (J. A. 327)

At the time of the hearing, the Union had assumed original jurisdiction[58/] and the trials had been completed. The Union had also ordered the pre-trial suspensions, but the orders had not

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56/ Article XVIII, Section 1 (d) of the Constitution authorizes pre-hearing suspension in emergency situations.

57/ The only part of Order of Recommendation No. 17 which had not been complied with was the recommendation that the General President cause an investigation to be conducted concerning certain allegations made at a Senate Select Committee hearing with respect to Feldman's involvement in a matter wholly unrelated to the charges on which he was being tried. (J. A. 320)

58/ It is worth noting, in the light of Mr. O'Donoghue's aspersions about collusion (Finding No. 119; J. A. ~~282),~~ 264), that, when the Union assumed original jurisdiction, suit was brought against it for an injunction, but the Union's counsel appeared in Tennessee and successfully resisted the injunction. (J. A. 559) been followed by the local. (J. A. 560-62) The only part of the Order of Recommendation that the Union left undone was an investigation and audit of the Southern Conference.

Order of Recommendation No. 18 requested the Union to publish the full text of the Monitors' Orders of Recommendation in The International Teamster beginning with Orders of Recommendation Nos. 15 through 20, to be published in the September issue of the magazine. (J. A. 339, ~~521~~ 502) The General President replied at once, agreeing in principle, but setting forth at some length the impossibility of clearing space for this material in the September issue of the magazine. (J. A. 502-03) By the time the October issue was ready for the press, the Board of Monitors had challenged the validity of the whole Consent Order. see p.71 supra. In the light of this development and considering the cost of the required publication,[59] the Union deemed it wise to postpone compliance. There was obviously no "bad faith" in that judgment.

By Order of Recommendation No. 20, the Monitors sought to have the Union promulgate, for adoption by all locals, a series of rules to govern local elections. (J. A. 340) The order "recommended" that the General President promulgate the rules by August 27, 1958. The reason for haste was said to be that the rules could apply to the forthcoming fall elections. (J. A. ~~251~~ 253) Despite this desire for haste, however, the Monitor neglected to consult any of the officials of the Union in advance (J. A. 345) and did not show the proposed rules to any of them until

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[59] The cost, as appears from an affidavit attached to appellants' motion for a stay herein, is $17,400.00.

August 19, 1948, eight days before they were to be promulgated. (J. A. 340) The Union did not promulgate the rules on the fixed date. Instead, after studying them, it informed the Monitors on September 10, 1958, that some of the rules were unworkable and others violated the Union constitution. (J. A. 413) That the Union's criticism of the rules was not unreasonable appears from the fact that the Monitors themselves, on October 24, 1958, re-drafted them to incorporate very substantial changes. (J. A. 414) Among other things, the proposed rules would unconstitutionally modify election eligibility qualifications. (J. A. 342) The Monitors argue that it is not unconstitutional for the Union to compel the locals to modify eligibility requirements, because, since the General President has a constitutional veto power over local by-laws,[60] he must have the related power to compel locals to adopt by-laws of his choosing. (J. A. 472) This argument is a non sequitur. By the same reasoning, it could be said that, since the United States Senate has a veto power over the President's nominations of cabinet officers, it must have the related power of itself designating the cabinet. If it is the unreasonableness of a position taken that betokens "bad faith", we submit that it is not the Union, but rather the Monitors who are guilty. And if "bad faith" attaches to him who prevented new election rules from going into effect by September 15, 1958, in time for the local elections, then again it is not the Union who is guilty for having taken eighteen days to study the proposed rules rather than the eight the Monitor allowed them, but rather the Monitor for

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60/ Article VI, Section 4.

having waited until August 19, 1958, to propose rules which were to be effective less than a month later.

Order of Recommendation No. 21 again related to the merger of Local 183 in Fairbanks, Alaska, with Local 959 in Anchorage, 400 miles to the south. This merger had been consummated in January, 1958, after the membership of both locals had overwhelmingly approved a merger at meetings held during the previous December. Both of these locals were in trustee-ship at the time of the merger. The Monitors' contention was two-fold: (1) that it was basically improper to merge trusteed locals; and (2) that the notice to the membership of the December meeting in Fairbanks had been defective. (J. A. 347) They recommended that the merger be set aside and that Local 183 be returned temporarily to trusteeship. The Union took the position that all the evidence established that the notice of the Fairbanks meeting had been ample and that the merger was desired by the vast majority of members of both locals and was in the best interest of the Teamster movement in Alaska. (J. A. 460) It therefore rejected the Order of Recommendation and it maintains that the rejection was not only made in good faith but was eminently sensible.

The other "Orders of Recommendation"[61/] in controversy all related to the problem of eligibility for office in locals.

[61/] This does not include Order of Recommendation No. 14. The controversy concerning that Order of Recommendation is conceived to have been too inconsequential to require detailed discussion. The Monitors wanted the Union to place on the agenda of a certain General Executive Board meeting a report (to be continued)

At issue was the interpretation of Article X, Section 5(c) of the Union constitution, which will be discussed in point VI, infra. For present purposes, it is enough to say that the General President, in order to insure maximum eligibility in trusteed locals so that their reinstatement to autonomy could be expedited, gave that provision of the Constitution a liberal interpretation which departed significantly from past practices of the Union. He restricted that liberal interpretation, however, to trusteed locals. The Monitors demanded that the liberal interpretation be applied to autonomous locals as well. Supra, note 17 at App. 18-19. That was the sum and substance of the controversy. Whether the liberal interpretation adopted by the General President is permissible for trusteed locals is a question that has not been raised. Nor is the present question whether his interpretation of the constitution as it applies to autonomous locals is a proper one. The only question is whether his refusal to agree with the Monitors' interpretation was in "bad faith". Since his position, rather than the Monitors', is supported by precedent and since there is not an iota of evidence to show that the disagreement was anything other than sincere, the District Court's "bad faith" finding is completely unsupportable.

61/ made by Price Waterhouse, so that it could be discussed with the Monitors and Price Waterhouse representatives in attendance. The Union neglected to place the matter on the agenda. (J. A. 338, 554-55) The subject matter of the report was nevertheless discussed at the meeting, though without the Price Waterhouse people. The general matter was discussed again at a later meeting with Price Waterhouse representatives in attendance.

We have shown in the foregoing that every matter as to which Mr. O'Donoghue has charged and the District Court has found "bad faith" and an attempt to "block and frustrate" the Monitors was nothing more nor less than a disagreement. In many areas, moreover, to say that the parties' positions were equally reasonable would be charitable to the Monitors. That there would be disagreements between the appellants and the Monitors was inevitable and, indeed, the Monitors apparently concede that it was foreseen, when the consent decree was adopted, that the Union might balk at some of the Monitors' demands.[62/] They say, however, that the parties never contemplated "bad faith" non-compliance.[63/] They, and with them the District Court, in order to sustain their position, find it necessary to hold that any balking by the Union at a demand by the Monitors is *ipso facto* an act of "bad faith", even when it is supported by good sense.

[62/] *Supra*, note 17 at 29.

[63/] *Ibid.*

VI. The Order Appealed From Requires Appellants to Violate the Union Constitution.

Under Article II, Section 4 of the Union's Constitution, a member, to be eligible for election to any office in any local or in the International, "must be in continuous good standing for a period of two years prior to nomination for said office...". In the 1952 and earlier constitutions, "good standing" was defined in the following terms:

> All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Any member failing to pay his dues at such time shall not be in good standing. Article X, Section 5(c).

In the 1957 Constitution the latter provision was amended by inserting between the quoted sentences the following:

> Where membership dues are being checked off by the employer pursuant to properly executed checkoff authorization, it shall be the obligation of the member to make one payment of one month's dues in advance to insure his good standing. Thereafter, he shall remain in good standing for each consecutive month for which the monthly checkoff is made.

Prior to the 1957 amendment, it had been the consistent interpretation of every administration of the Union that a member on check-off was not in good standing if his dues, though deducted in time by his employer, were not turned in to the local in time. (J. A. 569)

The General President of the Union has interpreted the 1957 amendment as relaxing the stringency of Article X, Section 5(c), by giving the member on check-off an opportunity to insure his good standing despite his employer's delinquency in transmitting the dues.

The District Court, in its Conclusion of Law No. 16 (J. A. ~~215~~ 277), gives the pre-1957 constitution an interpretation diametrically opposed to that always employed by the Union. It holds that, quite apart from the 1957 amendment, Article X, Section 5(c) does not impair the standing of a member whose employer is delinquent in transmitting checked-off dues. Having so interpreted the pre-1957 provision, the District Court then construes the 1957 amendment not as a relaxation of a previously restrictive standing provision, but rather as itself, for the first time, imposing the restriction. Conclusion of Law No. 17, (J. A. ~~216~~ 277). It then goes on to hold that, as a newly imposed restriction, the 1957 amendment was not properly promulgated and, to be effective, must be re-promulgated. Ibid.

In paragraphs 6 and 7 of the order appealed from, the District Court requires the appellants (1) to adopt and apply the interpretations of the constitution set forth in the Court's Conclusions of Law Nos. 16 and 17; and (2) to re-promulgate the 1957 amendment by a procedure specified in the order. (J. A. 281)

If the District Court was wrong in holding that, under the pre-1957 constitution, a member was in good standing despite his employer's delinquency in transmitting checked-off dues, paragraph 6 and 7 of the order appealed from cannot stand. The question, then, is the propriety of the Court's interpretation of Article X, Section 5(c) of the 1952 constitution.

Article VI, Section 2(a) of the Union Constitution provides that the General President "shall have authority to interpret the constitution and laws of the International Union and to decide all questions of law thereunder...., subject to appeal to the General Executive Board, and, thereafter, to the next Convention...". A union's right to "interpret and administer such rules and regulations is as sacred as its right to make them." 4 Am. Jur., Associations and Clubs, § 6. Judicial power to interfere with a union's own interpretation of its constitution, made as provided in that constitution, is limited. A court can determine only whether the union's interpretation, under the circumstances,[64] is reasonable, not whether the court would have made a different interpretation. Green v. Obergfell, 73 App. D. C. 298, 121 F.2d 46 (1941).[65]

Article X, Section 5(c) as it stood before the 1957 amendment did not specifically refer to check-offs of dues. But it clearly stated that "members paying dues to local unions must pay them on or before the first business day of the current month in advance." If an employer deducted dues in time, on a check-off arrangement, but did not transmit them to the local union in time, it would certainly be reasonable to hold that there had not a timely payment to the local union. That, as we have shown supra, is the interpretation which the Union has consistently employed with regard to checked-off dues. Though some might take a different view, the Union's view should not be overruled, because it "does not substitute legislation for interpretation, nor transgress the bounds of reason, common sense, nor contravene public policy of the laws of the land....".[66]

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[64] Mr. Justice Frankfurter, dissenting in Elgin, Joliet & Eastern R. Co. v. Burley, 325 U.S. 711, 757-58 (1945), said:

> "Rules of fraternal organizations, with all the customs and assumptions that give them life, cannot be treated as though they were ordinary legal documents of settled meaning... To an increasing extent, courts require dissidents within a union to seek interpretation of the organization's rules and to seek redress for grievances arising out of them before appropriate union tribunals."

[65] See Annotation, 21 A.L.R. 2d 1397, 1414.

If the Union's interpretation of the pre-1957 provision, as imperiling the "good standing" of members who are on check-off, is upheld, as we think it must be, then the 1957 amendment emerges in its true light -- as a device by which members on check-off can avoid the peril of loss of "good standing". So the Union has interpreted it. The District Court's interpretation of the 1957 amendment as itself constituting the imperilment must fall along with its erroneous interpretation of the pre-1957 provision.

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[66] *Ibid.*

VII. The Denial of the Union's Petition For Removal of Mr. Schmidt From the Board of Monitors Was Based on An Erroneous View of the Law.

The facts relied upon by the Union in support of its petition for removal of Mr. Schmidt as a Monitor were not in dispute. (J. A. 676) In brief, they showed that, after Mr. Schmidt's appointment to the Board of Monitors, he represented employers in legal proceedings against local Teamsters Unions and in collective bargaining negotiations with local Teamsters Unions. In detail, the record shows:

1. Mr. Schmidt represented Producers Distributors Associates, a New York employer, against Teamsters Local 816 in an arbitration proceeding before the New York Trucking Authority. Mr. Schmidt himself appeared at one formal session of the proceeding and his employee, Mr. Lawrence Smith, appeared at another. Moreover, Mr. Schmidt had two or three conferences about the case with the secretary-treasurer of the local. (J. A. 676)

2. Mr. Schmidt represented Howard Johnson Restaurants in collective bargaining negotiations with a Teamsters local in New York. But, before any contract was reached, a petition was brought in the National Labor Relations Board for decertification of the local as the bargaining representative, and Mr. Schmidt's employee appeared before the National Labor Relations Board on behalf of the employer and urged decertification of the union. (J. A. 677)

3. Mr. Schmidt represents the Schraffts restaurant chain in New York. In March or April of 1958, contract negotiations were conducted between Teamsters Local 816 and James J. Morrisey, Inc., Schrafft's commissary carrier which operates under an arrangement whereby Schraffts pays all drivers' wages plus a profit percentage. Mr. Schmidt reviewed the contract for Schraffts and had conferences concerning it with the secretary-treasurer of the local. (J. A. 677)

4. Mr. Schmidt's firm represented the Coin Service Company in collective bargaining negotiations with Teamsters Local 575. (J. A. 678)

5. Mr. Schmidt's firm represented the Independent Sanitation Owners Group of New York in collective bargaining negotiations with Teamsters Local 813. (J. A. 678)

The theory upon which Mr. Schmidt's removal was urged below and is urged here is that Mr. Schmidt's position as a member of the Board of Monitors may have a coercive effect in his dealings with the officers of Teamsters locals and that this coercive effect points up the conflict of interests inherent in his dual capacities: court-appointed Monitor of the International and employer representative in dealing with locals. (Tr. 737)

Mr. Schmidt's position below was that, since there was no evidence that his position on the Board of Monitors had actually resulted in any advantage to his employer-clients or any disadvantage to the locals with whom he dealt on their behalf, there was no ground for his removal. (Tr. 741-43) This position was apparently adopted by the District Court in denying the petition for removal. (J. A. 273, 280 ~~272, 279~~)

The question here is, therefore, whether the District Court was right in disregarding such potential conflict of interest as is here involved and in requiring an actual exemplification of conflict as a ground for removal.

Mr. Schmidt, under paragraph 2 of the consent decree (J. A. 59), is an officer of the court and, as such, must be governed by the Canons of Judicial Ethics. The Twelfth Canon provides:

> "Trustees, receivers, masters, referees, guardians, and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness."67/

The test, it should be noted, is not whether the officer has been demonstrated to have acted without impartiality; it is whether, by reason of his situation, he has impartiality. A person should be removed from a fiduciary office when he "has assumed a position in which his own interests may be antagonistic to his trust." Rhoderick v. Swartzell, 62 App. D. C. 180, 186, 65 F.2d 813, 819, cert. denied, 290 U.S. 677 (1933); see also Sauvage v. Galloway, 329 Ill. App. 38, 66 N. E. 2d 740, 743 (1946); Commonwealth v. North Shore R. Co., 259 Pa. 155, 102 Atl. 568, 569 (1917); 3 Bogert, Trusts and Estates 527 (1946). Disqualification arises not only from actual exemplification of a conflict, but also from the "probability or possibility that such a situation will develop." Drinker, Legal Ethics 104 (1954)

67/ Adopted by the American Bar Association in 1924; as reprinted in Drinker, Legal Ethics 327-337 (1954).

The consent decree, no matter how it may be construed, gives the Monitors a position of great influence in the Union. As sought to be construed by Messrs. O'Donoghue and Schmidt, it gives them tremendous powers: the power to place a local in trusteeship, the power to initiate proceedings to remove officers of a local, the power to set aside a local election, the power to determine eligibility for local office. The potential effect upon a local union officer, sitting across the collective bargaining table from a person armed with such powers, is impossible to disregard. The Monitors, moreover, have sought to obtain maximum effect from this potential by requiring that their every assertion of power be broadcast to all the locals through publication in the Union's magazine.

The powers asserted by Messrs. O'Donoghue and Schmidt are even greater than those conferred by the Union's constitution upon its General President and General Executive Board. So far as the Union's own officers are concerned, paragraph 6 of the consent decree eliminates even the possibility of conflicting interest. (J. A. 60) Certainly if the Union's officers are forbidden to have any personal interest in an employer, it must follow a fortiori that the Monitors should have no such interest.

That the parties knew in advance that Mr. Schmidt would not have ideal impartiality, because he was nominated to the Board of Monitors as a representative of the plaintiffs and was expected to act as their advocate, is irrelevant. Whatever conflict could be expected to exist between Mr. Schmidt's capacities as

Monitor and advocate was a conflict between interests of Union members. Appellants never had any reason to believe, however, that Mr. Schmidt also had an anti-Union interest through representation of employers of members of the Union. (Tr. 739)

Although the appellant Union did not, in support of its petition for Mr. Schmidt's removal, prove that he had ever, in fact, compromised the interests of the Union in his representation of an employer, it did prove that he occupied positions of potentially conflicting interest. That proof, we submit, justified his removal. Since that proof was submitted on an agreed statement of facts (J. A. 676), the District Court's finding that the conflict of interest charge was "unproved on the record" (J. A. ~~272~~ 273) and the conclusion "as a matter of law, that the evidence is not sufficient to sustain such charge" (J. A. ~~279~~ 280) must rest upon a theory that only actually exemplified conflict of interest, and not potential conflict, justifies removal of a court-appointed fiduciary officer. That view of the law, as we have shown, is incorrect. We submit, therefore, that the denial of the removal petition was error and should be reversed.

CONCLUSION

Since, as appears from the foregoing, the District Court by the order appealed from (1) adopted an unwarranted construction of the consent decree; (2) invalidly modified that decree; (3) violated the rule requiring certainty of judicial orders; (4) invalidly delegated judicial powers to the Board of Monitors; (5) acted on findings of fact and conclusions of law unsupportable by the record; (6) improperly interfered with the Union's interpretation of its constitution and required action in violation of that constitution; and (7) erroneously denied the Union's petition for removal of Godfrey P. Schmidt from the Board of Monitors; it is respectfully submitted that the said order should be reversed.

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BRIEF FOR BOARD OF MONITORS

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14,983

JOHN F. ENGLISH, et al.,

Appellants,

v.

JOHN CUNNINGHAM, et al.,

Appellees.

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United States Court of Appeals
For the
District of Columbia Circuit

FILED APR 15 1959

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ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Martin F. O'Donoghue
831 Tower Building
Washington, D.C.

Chairman, Board of Monitors

STATEMENT OF QUESTIONS PRESENTED

1. Where appellants refused to fulfill their affirmative obligations under a Consent Order to take corrective action to carry out Union reforms, could the District Court issue an order directing appellants to take necessary reform action?

2. Whether appellants must comply with future Orders of Recommendation of the Board of Monitors by adopting an appropriate course of corrective action where a Monitor Order of Recommendation demonstrates a need for corrective action in an area of union activity in which appellants are obligated to act?

3. Whether the portion of the order of the District Court directing appellants to take the corrective action outlined in Orders of Recommendation of Monitors was supported by substantial evidence that (a) each order showed the necessity for corrective action by appellants under the substantive obligations imposed on them by the terms of the Consent Order; (b) appellants refused in bad faith to take any corrective action; and (c) the Monitors' recommendation was reasonable and constitutional?

4. Whether that portion of the order of the District Court modifying Section 9 of the Consent Order to provide that the time for calling a convention should be subject to final approval by the Court and/or the order of the lower court in its entirety, can be sustained as a valid modification of the Consent Order because of the new and unforeseen conditions of bad faith on the part of appellants in attempting to frustrate the basic purposes of the Consent Order? Whether the findings of new and unforeseen conditions are supported by substantial evidence?

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UNITED STATES COURT OF APPEALS

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COUNTERSTATEMENT OF THE CASE

I. The Suit and the Consent Order

The Order appealed from arises from a suit brought against the International Brotherhood of Teamsters and its officers by 13 members, on behalf of themselves and all other members. On September 19, 1957, two weeks prior to the holding of the 1957 Miami Convention, suit was filed. The Complaint alleged that the delegates to this convention had been illegally elected and the convention had been rigged through the conspiratorial acts of the International officers and others. This conspiracy to rig the 1957 convention and to perpetuate themselves in office had been accomplished by the conspirators planning and perpetuating serious violations of law and of the Union Constitution. These acts included denial of democratic procedures to the membership, unconstitutional imposition of trusteeships, widespread violations of inter-union disciplinary procedures, failure to exercise judicial powers to prevent and remedy violations of the Constitution, wholesale misuse of Union funds for private gain, failure to abide by fiduciary safeguards in the handling of funds and properties, threats, coercion and unlawfulness in many local unions, and the continued existence of conflicts of interest and domination of some local unions by gangsters, racketeers and extortionists.

On October 24, 1957, the AFL-CIO Ethical Practices Committee recommended the expulsion of the Teamsters Union, on the grounds that Messrs. Beck, Hoffa and Brewster had used union funds for personal gains and advantages, and that the International Union was dominated and controlled by corrupt elements. The 1957 AFL-CIO Atlantic City Convention expelled the Teamsters International Union. It is worthy of note that the Teamsters Union has not adopted the AFL-CIO Code of Ethical Practices.

The plaintiffs' Complaint prayed for an injunction prohibiting the holding of the 1957 Miami Convention; the appointment of a receiver of the International Union to correct the existing constitutional abuses and corrupt practices; and, upon the correction of these abuses and corrupt practices, the holding of a new convention under court supervision (J.A. 26-27). A preliminary injunction issued by the court below, enjoining the holding of the 1957 convention, was stayed by this Court.

Shortly after the 1957 convention was held, the plaintiffs sought a temporary injunction enjoining the taking effect of any of the acts of this convention, including the seating of officers and amendments to the 1952 Constitution. A preliminary injunction issued by the Court below on October 23, 1957, as modified by this Court on November 4, 1957, prohibited the assumption of office by the newly elected officers and directed that, pending final determination of the suit, the officers be governed by the 1952 Constitution. The case was then set for trial.

After twenty-two days of trial, the parties presented to the Court a Consent Order which provided for the establishment of a Board of Monitors. This Consent Order was approved by the Court on January 31, 1958 (J.A. 58).

Under the terms of the Consent Order, a Board of Monitors was appointed on January 31, 1958 and began its operation under the Chairmanship of Judge Cayton. In May 1958, Judge Cayton resigned and was replaced by Mr. Martin F. O'Donoghue. The work of the Cayton Board was characterized by the Court below as follows: "The work of the Monitors was in a preparatory stage and the Monitors were only beginning to effectuate the basic purposes of the Consent Order" (J.A. 210, 167). After Mr. O'Donoghue was appointed Chairman of the Board, it issued numerous Orders of Recommendation to appellants showing the necessity for corrective action by appellants under the substantive obligations that they had agreed to carry out in the Consent Order. As the Court below found, trouble arose when the Monitors sought "to clean up the International organization and many of the locals by seeking the dismissal of persons in position of power and authority who were known to be or suspected of being trouble makers and of a mind to control elections and conventions contrary to the constitutional rights of the members. At about this time the Monitors also set out to install by-laws in the locals which would insure to the membership honest and uncontrolled elections. It was at this point that the Teamsters began to frustrate and block the Monitors in their efforts." (J.A. 167).

On September 17, 1958, the Board of Monitors filed a petition with the District Court for the construction, reformation and/or modification of the Consent Order and for instructions and orders of compliance (J.A. 64). An answer was filed by the Defendant International Union, and after six days of hearing, from November 5 to November 13, 1958, the Court, on December 11, 1958 entered a Memorandum Opinion construing and modifying the Consent Order (J.A. 164). Findings of Fact and Conclusions of Law (J.A. 206) were made by the Court below and the modified Order (J.A. 201) was entered on February 9, 1959.

II. Opinion and Order of the District Court [1]

The trial court modified the Consent Order to the extent that the time for calling a convention should be subject to the recommendation of the Board of Monitors to the General Executive Board of the International Union, with the exact time of holding the convention subject to the final approval of the Court. The trial court found that the Teamster officers, in disregard of their obligation to afford good faith compliance with the recommendations and advice of the Board of Monitors, did frustrate and block the efforts of the Monitors to effectuate the purposes of the Consent Order. (J.A. 208-209). The Court specifically found bad faith on the part of the Teamster officers and, after a hearing on the merits of each Order of Recommendation of the Board of Monitors, ordered compliance with various recommendations that the Court found were reasonable and relevant to the basic purposes of the Consent Decree. (J.A. 209-210).

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[1] The Findings of Fact and Conclusions of Law will be dealt with extensively in Argument II infra.

Appellants' request for a stay of the Court's order was denied. In a Memorandum Opinion, dated March 3, 1959, the District Court stated that the Consent Order and the Order of February 9, 1959, are not final orders but interlocutory in nature and any appeal as proposed would unnecessarily delay the ultimate termination of the litigation. The Court also stated that its order did not appear to be appealable under Section 1292, Title 28, U.S. Code, nor did it carry the recitation of necessity for review as is required by the amendment of September 2, 1958, to Section 1292.

SUMMARY OF ARGUMENT

I

The District Court's decision is a proper construction of the original Consent Order, for the Consent Order imposed on defendants substantive affirmative obligations to undertake a reform program in certain areas of union activity. (See Section 3, democratic rights of members; Section 5, adherence to fiduciary standards; Section 6, conflicts of interest; and Section 7, trusteed Local Unions.) When it was brought to appellants' attention that corrective action was needed in an area where they had obligated themselves to act, it was incumbent on appellants to take the necessary corrective action. If appellants refused, the lower court, after a full hearing had authority to direct corrective action. It is clear, therefore, that in light of the enumerated obligations imposed on appellants, basically there was a duty to comply with Orders of Recommendation of the Monitors when they disclosed a need for corrective action under the terms of the Consent Order irrespective of whether Monitors' recommendations were advisory or mandatory.

Under the terms of the Consent Order, the Monitors, as officers of the court, have authority to consult and make recommendations to the appellants in a wide area of union activity where the appellants already have an affirmative obligation to act as specified in the Consent Order. The Board of Monitors has a twofold responsibility: first, to make recommendations to appellants with respect to corrective action required by appellants' substantive obligations; and secondly, to report to the Court if appellants are performing the substantive obligations imposed on them under the terms of the Consent Order so that the Court can issue an order of compliance. Furthermore, the Monitors have implied powers as officers of the court to effectuate the basic purposes of the Consent Order. The Monitors have no mandatory powers to order the appellants to comply with a recommendation but if the facts show the necessity for corrective action in an area where appellants have assumed affirmative obligations and appellants refuse to take corrective action, the Monitors may petition the Court after full hearing to issue an order of compliance.

The enforcement process envisioned by the Court below respects the due process rights of appellants for if they have a good faith doubt as to any Recommendation of the Monitors, they may petition the Court below or even refuse to comply. This is true as to past or future recommendations of the Monitors. If appellants do not comply, the Monitors may petition the Court and after full hearing, if the facts warrant, the Court can order appellants to take corrective action required by their affirmative obligations under the Consent Order. Thus there is no delegation of judicial authority to the Monitors and in each instance a court order is required.

II

The District Court's order directing appellants to take the corrective action contained in Orders of Recommendation of the Monitors is supported by substantial evidence in the record that (a) each order showed the necessity for corrective action in an area of union activity in which appellants were obligated to take corrective action under the substantive obligations imposed on them by the terms of the Consent Order; (b) appellants refused in bad faith to take any corrective action and (c) the corrective action outlined in the Orders of Recommendation was reasonable and constitutional.

In addition there is substantial evidence in the record that makes it conclusively clear that appellants, guided in the belief that by calling a convention at the end of one year they could terminate the monitorship and avoid fulfillment of their obligation to undertake a reform program where needed, embarked on a course of procrastination, delay and downright deception in the hope of "outliving" the Monitors. Appellants made a determined effort to frustrate and block the Monitors in an attempt to avoid their obligations under the Consent Order. This course of conduct demanded effective action by the lower Court to prevent the Consent Order from being an instrument of fraud.

III

The validity of the order appealed from as a proper construction of the Consent Order (except to the extent the Trial Court modified Section 8 to provide the time for calling a convention should be subject to final approval by the Court) has been outlined above. In addition, the entire order of the District Court may be sustained as a proper modification because the original order was intended to serve as a means of correcting existing abuses in the Teamsters prior to the holding of a convention. Even assuming the parties contemplated that the method to effectuate this basic purpose was for the Board of Monitors to act solely in an advisory role, with reliance placed not so much on specific obligations of Appellants but on the overall good faith efforts of Appellants to effectuate the order, the least that can be said is that under the Consent Order appellants were required to make some efforts to take corrective action. With the Court having found that the Teamsters arbitrarily disregarded the Board of Monitors and attempted to thwart the basic purposes of the Consent Order, the Court had the inherent equity power to prevent this order from becoming an instrument of fraud by modifying not only Section 8, but the method of effectuating the basic purposes by providing that thereafter the Teamsters were required to assume substantive, affirmative obligations and to take corrective action when needed. This modification fully meets the tests laid down in the United States v. Swift & Co., 286 U.S. 106,114 (1932), in that the original Consent Order dealt with "changing conduct or conditions," was "provisional and tentative" in its operation, and was not based on facts "so nearly permanent as to be substantially impervious to change...."

This modification was a valid exercise of the power to modify, as it was properly based upon new and unforeseen conditions, namely, the bad faith of appellants in violating the terms of the Consent Order. Further, this modification was necessary in order to effectuate the basic purposes of the Consent Order, which were to insure representative elections and democratic procedures within the Union, in accordance with the International Constitution.

In modifying the Consent Order, the District Court observed all the requirements of due process by holding additional hearings, taking new evidence and considering objections to its proposed findings of fact and conclusions of law, before the entry of its order of modification.

This Court is limited in its review of the validity of the modification to an examination of whether the District Court was guilty of an abuse of discretion in exercising its inherent power to modify its own earlier order. Unless there has been an abuse of this broad discretionary power of an equity court, the contested modification should not now be set aside.

ARGUMENT

I. THE COURT PROPERLY CONSTRUED THE CONSENT ORDER AS IMPOSING OBLIGATIONS ON APPELLANTS TO UNDERTAKE A REFORM PROGRAM IN CERTAIN AREAS OF UNION ACTIVITY AND UPON APPELLANTS' REFUSAL TO UNDERTAKE THIS PROGRAM, THE COURT AFTER A HEARING HAD AUTHORITY TO ORDER APPELLANTS TO DO SO.

A. Sections 3, 5, 7 and 9 of the Consent Order imposed affirmative substantive obligations on appellants to take corrective action when needed.

In order to make clear to this Court the position of the Board of Monitors in regard to the original Consent Order, we submit the following is a proper interpretation of that order.

The history of the litigation and the contents of the Consent Order make it clear that there are three primary objectives to be accomplished. One goal is to guarantee the membership their fundamental democratic rights, in particular, free speech and honest elections. Another is to eliminate corrupt financial practices. When these objectives are met, there is to be a new convention governed by appropriate democratic standards.

A careful analysis of the Consent Order, in light of these objectives, is vital to the proper disposition of this case. The issue is not as appellants argue whether the Board of Monitors has hortatory or mandatory powers. The real issue involved in this case is two-fold: (1) did the Consent Order impose obligations on the appellants to take corrective action in certain areas when needed and (2) if the corrective action was not taken when required, how are the obligations to be enforced? It is submitted that to effectuate the above basic objectives the appellants took office provisionally on the assumption of the following substantive obligations independently of any concept of the Monitorship.

1. Section 3, "Bill of Rights" for Members. The mandatory obligation to insure the protection of the constitutional rights of members as to voting, elections, qualifications to stand for office and freedom of speech.

The Monitors maintain that Section 3 of the Consent Order imposed substantive obligations on appellants to take corrective action to protect the members' constitutional rights, in regard to honest elections, free speech and uniform qualifications for office. A far broader construction could be urged that this section imposes a duty on appellants to respect all the constitutional rights of members which is indeed their sworn duty under their Constitution. But to disclaim any allegation of an intent on the part of the Monitors to become general receivers of appellants we restrictively construe Section 3 to impose obligations on appellants to protect the constitutional rights of members in regard to elections, free speech and fair qualifications for running for office. We find authority for this construction in the fact that there are two parts to Section 3 of the Order:

(1) the Monitors are to make recommendations to Appellants on the appeals taken by members "and" (2) they are to counsel with Appellants in order to insure constitutional rights of members in regard to free speech, honest elections and qualifications for office. The word "insure" imputes obligation. The Board of Monitors alone cannot enforce and protect the members fundamental rights, as spelled out in Section 3, but the General Executive Board working with the Board of Monitors, can. There is a duty, therefore, imposed upon both to effectuate this basic purpose of the order.

If Section 3 did not impose obligations upon the General Executive Board, it would be the only major portion of the Consent Order (see Sections 3 through 9) that does not. Section 3 must be read as an integral part of the entire Consent Order. Section 1 permits the "provisional officers to assume office" provisionally and in "accordance with the following paragraphs of this decree." The General Executive Board assumes important obligations in Sections 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14. Section 3 deals with one of the primary purposes behind the Consent Order. Clear language and a common sense interpretation of this Order as an entire document meant to effectuate these basic purposes, precludes a construction of this Section that would not permit enforcement of fundamental democratic rights as guaranteed by the Union Constitution as regards honest elections, free speech and fair qualifications for running for office. Furthermore, the Section must be read in light of the amended complaint, the history of the litigation and the other parts of the Consent Order. The basic purpose of the Consent Order was to assure basic fundamental democratic processes for the members in order that there could be honest elections to insure that delegates to the new convention would be properly chosen.

It would be highly incongruous to impose obligations in financial matters, conflict of interests and matters of trusteeship without imposing obligations relating to the key purposes of the Consent Order. Yet appellants would have the Court read the words "in order to insure the enforcement and protection of all rights of the individual members and the subordinate bodies...as guaranteed by the provisions of the International Constitution," etc., as a mere preamble to the right of the Monitors to make recommendations on appeal which appellants could flout if they did not like them. The essence of any reform action is the guarantee of members' democratic rights. Under appellants' construction, this Court-approved Order becomes a worthless document and a fraud on the lower court.

One further point concerning Section 3 and that is appellants' position on what constitutes an appeal. Not only do appellants deny they have assumed under this Section an obligation to insure democratic rights and a corresponding duty on the Board of Monitors to advise on these rights, but demonstrating their distorted construction of the Court's order is their restriction of the Monitors' power to recommend on appeals to "appeals taken to the General Executive Board." Section 3 provides the Monitors "make recommendations upon review of appeals taken pursuant to the provisions of the International Constitution." This includes all appeals under the International Constitution, more particularly Article VI, Section 2, which provides: between meetings of the Executive Board, the General President has authority to "interpret the Constitution and laws of the International and to decide all questions of law thereunder between meetings of the General Executive Board . . . shall have authority . . . to settle and determine all grievances and disputes submitted to him by joint councils, local unions, and other subordinate bodies, between meetings of the General Executive Board, all subject to appeal to the General Executive Board." Most of the disputes, grievances and appeals that are had in the International Teamsters are taken by individual members, local unions and joint councils to the General President. To illustrate, Local 282 of the City of New York, Vice President O'Rourke's local union, illegally and unconstitutionally suspended all meetings of the local union for the months of June, July, August and September, 1958. This was called to the attention of the Board of Monitors by the members of Local 282 and the Board of Monitors issued Order of Recommendation No. 8, recommending to the General President that the actions of the officers of Local 282, including Vice President O'Rourke, in cancelling local union meetings, were unconstitutional.

Under the defendants' construction of Section 3, the Board of Monitors could not have requested the General President to take any action. Here was unconstitutional action of a local union's officers and, according to the defendants, we could only wait until the members appealed to the General Executive Board. By the time the appeal went through, and before the Board of Monitors could act, the summer would have been over and the meetings would not have been held.

There are numerous grievances and complaints that have come to the Board of Monitors of the illegal pre-election procedure where protests are made to the General President or appeals taken by the members of the local union to the General President which the Board of Monitors has consistently acted upon. Likewise, there are post-election protests where the appeals are made to the General President under Article VI, Section 2(a). Both the pre-election protests and post-election protests should be more adequately spelled out in the

International Constitution; however, these protests or appeals are made to the General President.

It is submitted that Section 3 encompasses all such appeals taken pursuant to the International Constitution and the Board of Monitors has recommendatory power in this area.

2. Section 4, By-Laws. The obligation to recommend to the local unions the model code of by-laws submitted by the Board of Monitors.

3. Section 5, Fiduciary Standards. The mandatory obligation to (1) review in consultation with Board of Monitors accounting and financial controls and procedures, both for the International and its subordinate bodies, namely, conferences, Joint Councils and locals; (2) review and where needed establish such controls and procedures; and (3) all persons having custody or management of funds shall be required to adhere to legal and equitable standards and obligations imposed on fiduciaries.

Appellants admit obligations (1) and (2), but make no mention in their Brief of the obligation to require adherence to legal and equitable standards and obligations imposed on fiduciaries by officers having custody or management of funds. This is one of the most important provisions in the Consent Order. It is submitted that this provision places an obligation upon the appellants and requires appellants to take corrective action whenever it is brought to their attention officers have mishandled funds.

4. Section 6, Conflict of Interests. The mandatory obligations that officers (1) shall not have financial interests that conflict with fiduciary

duties; (2) shall not own or have substantial interest in a company bargaining with Teamsters; and (3) shall not own or have a substantial business enterprise, a substantial part of which consists of buying from, selling to, or otherwise dealing with the business enterprise with which the Teamsters bargain collectively.

5. Section 7, Trustee Local Unions. The mandatory obligation (1) to review and examine the status and condition of local unions under trusteeship; and (2) to remove trusteeships and restore self-government with all deliberate speed consistent with the best interests of the membership of the trustee local unions.

The clear intent of Section 7 is that appellants obligated themselves that they would do everything that was necessary to protect the membership of the trusteed Local Unions to the end that the locals be restored to autonomy. Appellants in their Brief, although admitting the obligatory effect of Section 7 of the Consent Order, speak only in terms of an obligation to review the status of the trusteed Local Unions. They ignore that they obligated themselves under the Consent Order to exercise their Trusteeship powers consistent with the best interest of the members of these Local Unions. The corrective action in regard to certain trusteed Local Unions ordered by the lower Court was necessary to protect the membership of the trusteed Local Unions in question.

6. Section 9. The Convention. The mandatory obligation (1) that the call for a new convention be issued in accordance with the International Constitution; (2) the delegates to the Convention be elected in strict and literal compliance with the International Constitution; (3) that the General Executive Board recommend to Local Unions that delegates be elected by secret ballot; and (4) that the Convention Credentials Committee examine and approve the credentials of all delegates to the Convention.

It is clear from a mere reading of the above-enumerated obligations that appellants have bound themselves under this Consent Order to take certain corrective actions and to refrain from other actions. Certainly, it is beyond question appellants were obligated to divest themselves of all financial interests, issue any call for a Convention in strict compliance with the Constitution, recommend the adoption of the model by-laws drafted by the Monitors, etc. (See Sections 6, 9 and 4, respectively). It is clear these are examples of mandatory obligations imposed upon the appellants. It is equally clear that if appellants failed to do any of these required acts, the Court could direct compliance.

The order of the Court below is nothing more than an order directing appellants that they do certain acts. The acts to be performed are contained in Monitor recommendations that are incorporated into the Court's order. It is clear that each of the acts required of appellants are nothing more than corrective actions that appellants bound themselves to perform under the above-enumerated obligations assumed under this Consent Order. The order of the Court below is merely a mandate to appellants to do what they already have bound themselves to do.

For example, under Section 5 of the Consent Order appellants assume the obligation to require all persons having custody or management of funds to adhere to legal and equitable standards and obligations imposed on fiduciaries. Certainly, when unrebutted sworn evidence was brought to the attention of appellants that appellant Brennan, an International Vice-President, and a partner of appellant Hoffa in private affairs, had dipped his hands into the till of a health and welfare fund to pay the salary of a boxer under his and Hoffa's management, such conduct violated all legal and equitable standards and obligations imposed upon fiduciaries. Under Section 5, appellants were bound to require adherence to fiduciary standards. It is submitted that under this Section when the facts concerning Vice-President Brennan were brought to appellants' attention they were obligated to take corrective action to require adherence to fiduciary standards, and if appellants refused, the Court had authority to direct corrective action.

Another illustration that clearly demonstrates the substantive obligations imposed on appellants, is the subject matter of Order of Recommendation 5A and 11. Section 3 of the Consent Order requires honest elections, protection of the right to stand office and free speech. Section 5 of the Consent Order imposes the obligation on the defendants to establish where needed accounting and financial procedures. It was necessary to the establishment of such procedures to have audits made of some Local Unions. In addition, under Section 7 of the Consent Order appellants were required to examine and review the status of trusteed locals to the end that they be returned to self-government as soon as possible. Evidence was presented to appellants in regard to trusteed Local 245, (1) that there had been a lack of due process in the election procedures preliminary to the Local being returned to autonomy, (2) that members were being deprived of the right to run for office and (3) that officers of the Local Union in violation of the Constitution were not bonded. When these matters were brought to their attention, it was incumbent on appellants by virtue of the above-mentioned obligations contained in Sections 3, 5 and 7, to take corrective action. Indeed, counsel for the appellants admitted to the Court below that these obligations were imposed on them and that the appellants should have and would now take the necessary corrective action [2] when he stated:

> I agree with the Chairman that, after there had been a refusal and a persistent refusal, they should have removed those officers in 245 from office and that

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[2] To date no corrective action has been taken.

> was not done; and to that extent I would have to confess guilt on the part of the International with respect to this Order but I must say this to your Honor in mitigation here: By the time a refusal had come back to the instruction and order of September 11, directed to the President of the Union to the Officers out at 245, this whole Consent Decree and the Monitors' set-up had been cast under a cloud of doubt by the petition which was filed and by a request that Rule 23(c) be considered in determining whether or not the order should be vacated.
>
> But I will say to your Honor, as I said previously, that these officers, if they persisted in refusing, should be replaced, and I say to your Honor now, that I stand by that position; and if there is a refusal, hereinafter it will be our recommendation that that take place, and that the audit go forward. (emphasis supplied). (Tr. 828-829).

Moreover, there are many other instances where appellants have recognized their substantive obligations under the Consent Order and have complied with some of them. 3/

Furthermore, it is clear from a mere enumeration of these obligations that the area of corrective action imposed on appellants is tantamount to a general housecleaning. The legal obligations covered in the Consent Decree, namely crass misuse of the power of trusteeship (Section 7); mishandling of funds (Section 5); conflicts of interest (Section 6) and violations of the membership constitutional rights to honest elections, free speech and fair qualifications for office (Section 3) are the same unethical practices for which the Teamsters were expelled from the AFL-CIO and are matters of "general housekeeping" which the Federation demands to be corrected before readmittance to the "House of Labor" is granted.

It is clear, therefore, that in light of the enumerated obligations imposed on appellants that basically there was a duty to comply with Orders of Recommendation of the Monitors when they disclosed a need for corrective action under the terms of the Consent Order irrespective of whether the Monitors' Recommendations were advisory or mandatory.

3/ Audit of the books of 107; bonding of officers of Local 107; agreeing to conduct trusteeship proceedings against Local 107; and withholding the release of trusteed locals until uniform election procedures could be agreed upon.

B. ALTHOUGH ONLY AN ADVISORY AND REPORTING BODY, THE BOARD OF MONITORS' RECOMMENDATIONS HAD TO BE FOLLOWED BY APPELLANTS WHERE THEY DISCLOSED A NEED FOR CORRECTIVE ACTION IN AN AREA WHERE APPELLANTS HAD AN AFFIRMATIVE OBLIGATION TO ACT.

Under Section 2 of the Consent Order the Board of Monitors was created under the continuing supervision and direction of the Court below in performance of certain duties specified in the Consent Order. The monitors are "officers of the Court" and they are given authority to "consult with" and "make recommendations" to the appellants only in areas where the appellants already have a substantive obligation to take corrective action as specified in the Consent Order. The recommendations of the Monitors are not made in a vacuum. They concern the identical subject matter of the substantive affirmative obligations assumed by appellants. Appellants becloud the issue by constantly considering Monitor recommendations independent of their affirmative obligations of corrective action. They admit the Consent Order contemplates reform measures but seemingly have forgotten that the Board of Monitors was conceived of as a Board composed of experienced labor experts who were to advise the appellants in the reform program they obligated themselves to undertake. The appellants also completely ignore the reporting function of the Monitors under Section 11 of the Consent Order which requires the Monitors to report to the Court at least semi-annually. Obviously the report was to concern itself with whether appellants were complying with the substantive obligations imposed on them by the Consent Order. Thus, the Board of Monitors have a two-fold responsibility: first, to make recommendations to appellants with respect to any corrective action demanded by appellants' substantive affirmative obligations; and secondly, to report to the Court on the progress of appellants' required reform program.

The power and duty of the Monitors under the Consent Order to "counsel with and make recommendations" to the General Executive Board extended to a wide area of union activity, namely:

1. Section 3. "Bill of Rights" for members.

   To insure the constitutional rights of individual members and subordinate bodies of the Brotherhood in regard to democratic procedures in the Union.

2. Section 4. By-Laws.

   To create a model code of by-laws which the International must recommend to the Local Unions for adoption.

3. Section 5. Fiduciary Standards.

   The power of the Board of Monitors to recommend as to proper financial and accounting procedures and adherence to fiduciary standards of members handling Union funds.

4. Section 7. Trusteed Local Unions.

   Power to recommend with regard to the status of trusteed locals.

5. Section 8. Call of New Convention.

   Power to recommend that a new convention be held.

6. Section 9. New Convention.

   Power to recommend with regard to credentials of delegates at new convention.

The Monitors, in addition, as officers of the Court, certainly have implied powers to act whenever it is necessary to effectuate the basic purpose of the Consent Order. Thus the contention that the Monitors cannot act in the area of conflict of interest (Section 6 of the Consent Order) is without merit for the objectives of this Section are certainly basic to the purposes of the order. Furthermore, it is quite startling at this late date to have appellants now maintain that this is not an area of authority of the Monitors. For they long ago conceded that the Monitors had such authority when the appellant officers filed without objection affidavits with the "Cayton" Board of Monitors showing that they had complied with this section of the order.

Appellants also deny (App. Br. 26-27) that the Board of Monitors have any authority to consult with appellants in regard to fiduciary standards imposed on appellants by Section 5 of the Consent Order. Again even if there is no express power given the Monitors, they certainly have the implied powers as officers of the court to effectuate the basic purposes of the Consent Order to recommend to appellants the necessary corrective action when this vital section of the Consent Order has been breached. In addition, who, other than the Monitors, will call to the attention of the Court below the breach of this section of the Order so that the Court, after proper hearing and proof, may issue an order of compliance. We view ourselves as an investigatory arm of appellants and of the Court below as well. Otherwise, startling violations of the substantive obligations imposed on the appellants by the Consent Order in this and other sections of the Order would never be corrected. Lastly, it is startling to read the Board of Monitors out of the second sentence of Section 5 of the Consent Order (establishing fiduciary obligations for persons handling union funds) which is so intimately bound up with the language immediately preceding it (accounting and financial methods, procedures and controls affecting union funds.)

The Board of Monitors has no mandatory power in itself to compel action by appellants in the areas mentioned above. We view ourselves as having a two-fold duty.

(1) The Monitors must investigate in the areas above mentioned and if we find facts showing the necessity for corrective action under the substantive obligations imposed by the Consent Order on appellants to ask them to take appropriate action. If appellants believe the facts show a violation of these obligations they must comply; otherwise they violate the terms of the order. If they do not in good faith believe the facts show a violation of the obligations imposed on them, they have a duty to petition the Court below and complain of the invalidity of the recommendation. It is significant that appellants made no attempt to petition the Court below on any Order of Recommendation until the Monitors sought to have the Court below impose the corrective action shown to be necessary under the substantive obligations imposed on appellants by the Order. Furthermore, prior to the Monitors' petitioning the lower Court for instructions, in only two instances did appellants propose any alternative action to that proposed by the Monitors. In that case involving Local 107 the Monitors recommended immediate trusteeship for the Local. Appellant Hoffa suggested a regular trusteeship proceeding with a hearing. This alternative action was at the time thought to be a reasonable and adequate corrective action and accordingly was accepted by the Monitors. The Monitors also accepted the proposal of the appellants with respect to the non-commingling of the funds of Local 183 and Local 159.

(2) After making a recommendation to the appellants with which they neither comply nor consult the Court below, the Monitors have the duty of bringing the matter to the attention of the Court.

This is demonstrated by Section 11 of the Consent Order which requires that "the Board of Monitors shall make a report at least semi-annually to the Court. (Emphasis supplied). The Court after proper hearing and proof can issue an appropriate order if warranted by the facts.

Section 9 of the Consent Order offers an excellent example of when the appellants must follow a proper Monitor recommendation. Section 9(a) imposes a substantive obligation on Appellants that delegates to the new convention shall be elected "in strict compliance with the International Constitution" (Emphasis supplied). Section 9(c) provides that the Monitors "shall counsel with" and "make recommendations to the Credentials Committee" in regard to the seating of delegates. Should an investigation by the Monitors reveal that delegates had improper credentials and so recommended to the Committee, it would have to unseat them for otherwise delegates would not have been elected "in compliance with the International Constitution." Refusal to do so would be a refusal to take the corrective action demanded by appellants' obligation under Section 9(a).

It is submitted therefore that when the Monitors make a recommendation which shows the necessity for corrective action by appellants under a substantive obligation imposed upon them by the Consent Order the appellants must take the affirmative corrective action required or if they have a good faith doubt about the necessity of corrective action to question the matter in the Court below.

C. UPON A REFUSAL OF APPELLANTS TO FOLLOW RECOMMENDATIONS OF THE MONITORS IN AN AREA WHERE CORRECTIVE ACTION WAS NEEDED AND APPELLANTS WERE OBLIGATED TO ACT, THE DISTRICT COURT AFTER A FULL HEARING HAD AUTHORITY TO ENTER AN ORDER DIRECTING NECESSARY CORRECTIVE ACTION.

The Consent Order is obviously a judgment. And as Black on Judgments states:

> The first and most obvious consequence of a judgment is that it establish an indisputable obligation and confers upon the successful party the right to issue execution or other process of the court for its enforcement. But this (the enforcement) it must be stated is not an integral part of a judgment. The judgment is merely an affirmation of a liability. The right to use the process of the court for its enforcement is a consequence which the law attaches to it.
> 1 Black, Judgments, Para. 4 (2d ed. 1902).

In order that the enforcement process to be used in this case can be more readily understood, we submit the following chart as a visual explanation of that process.

Method of Enforcing Consent Order

APPELLANTS

Substantive Obligations imposed under Sections 3, 4, 5, 6, 7, 9 of Consent Order to take corrective action

Recommendation

Appellants may always question any initial recommendation by recourse to Court below or petition Court for instructions as to appropriate action required.

BOARD OF MONITORS

Step 1 Recommends that Appellants substantive obligations requires certain corrective action.

Step 2 If Teamsters fail to take appropriate corrective action required by their substantive obligations and thus violate substantive obligations, Monitors in accordance with Section 11 report to the Court by petition.

Petition

COURT

Step 3 After a full hearing and a determination by the Court that corrective action is necessary to fulfill substantive obligations, Order of Court may issue, directing appellants to take necessary action.

Step 4 Upon failure of appellants to take steps directed by Court Order to Show Cause may issue as to why appellants should not be held in contempt.

It is obvious that the enforcement process envisioned by the Court respects the due process rights of appellants. As set forth in the chart above, if appellants have a good faith doubt whether the corrective action suggested in the

Recommendation of the Monitors is not required under the substantive obligations imposed on them by the Consent Order, they may: (1) point out to the Monitors that other alternative action may correct the situation; [4/] (2) complain to the Court that the corrective action proposed in the Recommendation was not a substantive obligation imposed by the Consent Order. Further, even if appellants neither comply nor complain they are in no way in jeopardy at this point, for the Monitors have no sanctions they can impose. They must petition the Court and show a violation of substantive obligation imposed by the terms of the Consent Order. Thus the Court, after proper notice, hearing and proof, may issue a specific order if the facts warrant ordering appellants to take specified corrective action. It is submitted that the procedure here described destroys appellants' argument (App. Br. 54) that "the Order appealed from, to the extent that it requires compliance with future orders [5/] of the Board of Monitors is void for uncertainty.

[4/] See p. 20 *supra*, where the appellants suggested regular trusteeship proceedings rather than the emergency trusteeship to be imposed immediately on the Local Union. *The Monitors agreed to this alternative corrective action*.

[5/] It should be noted that the Court below directed appellants to comply with all future Monitor Orders of Recommendations that are reasonable and relevant. The Board of Monitors do not interpret this portion of court order, as appellants have argued, as a blind mandate that appellants comply *ipso facto* with the Monitors' recommended action but *merely* that appellees adopt an appropriate course of corrective action under the circumstances of each case. The ultimate decision of what is the appropriate course of action in a given situation can only be decided by the Court. If either appellants or Monitors have a question over what is the appropriate course of action to follow, recourse can always be had to the Court. Further, as has been pointed out, if, after a recommendation of a course of action is made by the Monitors, the Monitors envision no necessity of petitioning the Court so long as appellants adopt a course of action that is appropriate. This is evidenced as has been previously pointed out by the Monitors' acceptance of the alternate appropriate action proposed by Appellants in the case of Local Union 107.

For example, if the Board issues a recommendation in the future, as we have just explained, appellants can comply or complain to the Court below about the invalidity of the order. Even if appellants do neither, the Monitors must petition the Court, and only after proper hearing and if the evidence warrants, will the Court direct compliance with its order. It must be assumed that the Judge at that time will comply with Rule 65(d) of the Federal Rules of Civil Procedure that the order then entered will be specific.

It is also clear from the procedure thus described that there is no invalid delegation of judicial authority to the Monitors. As we have just pointed out, even if appellants refuse to either complain or comply with a future Order of Recommendation they are not in jeopardy for, as we have stated, the Monitors would have to petition the Court below and show: (1) that appellants had the substantive obligation to take corrective action in an area where they had a duty to act and (2) that they had not done so. Again, as we have stated, only after proper hearing and proof could or would the Court issue an order. And, as appellant states in its brief (App. Br. 57), the recommendation of the Monitors is like the so-called order of the National Labor Relations Board which is not worth the paper it is written on until the Board (as the Monitors must do) "petitions the Court for an order of enforcement." The violator is not guilty of contempt for violating the Board's order (nor is appellant regarding an Order of Recommendation) but only for violating the Court's enforcement." This is exactly the position of the Monitors in regard to the enforcement procedure in this case. Consequently, since it is always the Court's order that must be violated, there is no valid question of any delegation of judicial authority.

II. THE DISTRICT COURT'S ORDER DIRECTING APPELLANTS TO TAKE CORRECTIVE ACTION CONTAINED IN ORDERS OF RECOMMENDATION OF THE MONITORS IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD THAT (a) EACH ORDER SHOWED THE NECESSITY FOR CORRECTIVE ACTION BY APPELLANTS UNDER THE SUBSTANTIVE OBLIGATIONS IMPOSED ON THEM BY THE TERMS OF THE CONSENT ORDER; (b) APPELLANTS REFUSED IN BAD FAITH TO TAKE ANY CORRECTIVE ACTION; AND (c) THE MONITORS' RECOMMENDATION WAS REASONABLE AND CONSTITUTIONAL.

The lower court has ordered the appellants to take the corrective action as outlined in various Monitor Orders of Recommendation. In this section we shall consider the corrective action ordered by taking up seriatum each Order of Recommendation which admittedly has not been complied with by appellants. We shall establish conclusively that (a) each order showed the necessity for corrective action by appellants under the substantive obligations imposed on them by the terms of the Consent Order; (b) that appellants refused in bad faith to take any corrective action and (c) that the corrective action ordered by the lower Court was reasonable and constitutional.

For the purposes of the validity of the modification of the original Consent Order, which will be considered in Section III of this brief, it is important to note in the discussion of the various Orders of Recommendation the evidence of constant bad faith on the part of appellants. It is clear that appellants, guided by the belief that by calling a convention at the end of one year they could terminate the monitorship and avoid fulfillment of their obligation to undertake a reform program where needed, embarked on a course of procrastination, delay and downright deception in the hope of "outliving" the Monitors. It is also important to note that appellants in the lower court did not offer a shred of evidence that during the reign of the provisional officers any positive reform measures had been taken sua sponte.

The Court below did find that the appellants substantially complied with Monitor recommendations during "the early days of the Monitorship" but this occurred during a period when "the work of the Monitors [was] in a preparatory stage and the Monitors [were] only beginning to effectuate the basic purposes of the Consent Order." (J.A. 210; see also J.A. 167) As the court below found, trouble arose when the Monitors moved from matters of minor significance to crucial items demanding effective corrective action. Then the appellants embarked on a determined effort to frustrate and block the Monitors (J.A. 167) and to avoid their obligations under the Consent Order.

ORDER OF RECOMMENDATION NO. 4

In the course of proceedings conducted during April and May, 1958, by the Senate Select Committee on Improper Activities in the Labor Or Management Field, sworn testimony of accountants and FBI agents disclosed numerous forgeries of checks issued by Joseph Grace, the President, and Raymond Cohen, the Secretary-Treasurer of Local 107 (forged checks of Union funds cashed in the Local's office and forged strike benefit checks); improper borrowing of union funds; and use of union monies to pay personal expenses of Raymond Cohen[6] (J.A. 222, 477, 479, 576-579). There was also sufficient evidence to necessitate an investigation of alleged under-the-table dealing and breach of fiduciary obligation by Cohen and one Lapensohn, a business agent of the local, who had been charged with giving collective bargaining contract advantages to Food Fair over its competitors. In return, Cohen and Lapensohn allegedly received gifts of stock and other monetary benefits from the President of Food Fair (J.A. 225-226, 479, 576-577). When questioned concerning these matters, Cohen and Grace invoked the Fifth Amendment (J.A. 533).

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[6] Mr. Cohen is also a trustee of the International Union (J.A. 581).

Initially, because of the serious nature of the disclosures, the Monitors had desired the General President to exercise his constitutional emergency trusteeship powers. However, a compromise was reached upon the assurances of Teamster General Counsel Williams that proceedings would be instituted forthwith and that there would be a public member on the panel (J.A. 226-227, 477-478, 533-534). Accordingly, on June 13, 1958, in Order of Recommendation No. 4, the Board of Monitors recommended that, pursuant to the provisions of Article VI, Section 5(a) of the International Constitution, trusteeship proceedings should be instituted against Local 107 and that a panel, which was to include a public member, should be appointed to conduct a hearing (J.A. 331). Order of Recommendation No. 4 further provided that:

> "It was agreed that Price Waterhouse, certified public accountants, were to be authorized by the Board of Monitors to contact the Senate Select Committee and audit and review the books and records of Local 107 and to examine the evidence that the Senate Select Committee had in order that the matter could be presented properly to the panel and that the International Union should immediately notify the bonding company that now has current and in operation a fidelity bond covering the officers of 107." (J.A. 331).

With respect to the portion of the Order dealing with the bonds, it was only after repeated Monitor requests to the Teamster General Counsel that a letter was addressed by the General President to Cohen requesting him to file a notice of loss with the bonding company, and it appears that the Teamsters have not even inquired whether the notices have been filed. (J.A. 227-278, 583, 584).

With respect to the trusteeship proceedings, the Teamsters embarked upon a policy of delay, and as late as July 9, 1958, the public member of the trusteeship panel had not received official notice of his appointment. It thus became necessary for the Chairman of the Board of Monitors to insist that the public member be officially notified and that a date be set for the hearing. (Monitors' Ex. 7). The Chairman also had to request the removal of the International representative on the panel because of his close associations with Cohen, and it was more than a month before a replacement was made. (Tr. 274-275; Monitors' Ex. 29(a) re. Ex. 6, dated July 12, 1958).

Despite the fact that no union action had been initiated except at the persistent urging of the Monitors, the August 1958 issue of The International Teamster falsely proclaimed to the membership that the trusteeship panel had been "established at the request of Ray Cohen . . . and other members of the Locals' Executive Board." (Monitors' Ex. 44, p. 10).

The Price Waterhouse report concerning Local 107, filed with the Monitors early in September, 1958, was immediately forwarded to General President Hoffa and General Counsel Williams (J.A. 229, 478-479). The accompanying letter requested that charges be filed against Local 107 by September 15 and that a hearing be conducted by October 1 (J.A. 229, 479-487). There can be no question but that the Price Waterhouse report clearly established the need for a trusteeship proceeding (J.A. 576-579). It should also be noted that the Teamster General Counsel had been supplied by the Monitors in July 1958, with a memorandum outlining the necessity of maintaining the requisites of due process in intra-union proceeding, such as, the filing of charges, substantial proof, and that the charging and investigatory party could not sit as a hearing officer without rendering the entire proceeding void, etc. (J.A. 487). Nevertheless, in a rather startling development, Mr. Hoffa on September 8, 1958, without consultation with or even notice to the Monitors, forwarded a copy of the Price Waterhouse report to Raymond Cohen, together with a letter. This letter stated that a panel "as proposed by the Monitors" would be in Philadelphia to conduct a preliminary investigation on September 11, 1958 (J.A. 229-230, 479, 480). This statement that the Monitors had proposed the preliminary investigation was false; the Monitors had only recommended the filing of charges and the conduct of a hearing (J.A. 599).

With respect to this incident, Mr. Bergan, counsel for the Teamsters, testified in the Court below that there had been a "slip-up" and that if the panel went to Philadelphia without the required written charges and notice of hearing, and without the ten-days' notice, as provided by Article VI, Section 5(a) of the International Constitution, "they were sure to be enjoined." During this testimony of Mr. Bergan, both General President Hoffa and Mr. Gibbons, Executive Assistant to the General President, were present in the courtroom, but neither made any effort to take the stand and testify as to the suspicious manner in which this transaction had been handled, or as to why the "slip-up" had not been remedied. Certainly, it must have been obvious to Mr. Hoffa that the whole transaction should be viewed with some suspicion, for the complaint, which was filed in the Philadelphia Court on September 10, 1958 was actually prepared and ready for filing as early as July 10, 1958, the date on which the complaint was verified. (J.A. 230, 367). The complaint in the Philadelphia Court alleged that the General President was without authority to investigate and that his action in that respect was "arbitrary and capricious." (J.A. 363). Since Local 107 was not notified until early in September that it was going to be investigated by the panel, it is rather odd that it had this information as early as July 10, 1958 when the complaint was verified.

Moreover, it should be noted that the injunction enjoins the International Brotherhood of Teamsters "from proceeding with an investigation for the purposes of determining whether Local 107 . . . shall be placed in trusteeship." (J.A. 382). Although this is a rather unusual type of injunction, it does not enjoin a panel from conducting a hearing on properly filed charges after the giving of the requisite ten days' notice under Article VI, Section 5(a) of the Constitution.

The Teamsters' conduct clearly violated common sense, the Monitors' recommendations, the constitutional requirement of a ten-day notice (Article VI, Section 5 of the International Constitution -- J.A. 299), and the due process requirement of written charges! Thus, although the Monitors had continually insisted that the provisions of the International Constitution be strictly followed in the trusteeship proceedings, the Teamsters deliberately resorted to the unprecedented procedure of directing the same panel that was later to hear the case to conduct a preliminary investigation and to assist in preparing the charges to be filed. This move facilitated the efforts of Raymond Cohen and other officers of the local to secure a court order enjoining the proceedings.

One of the grounds on which the injunction was granted was that the panel sent to investigate the charges was the same panel that was later to hear these charges (J.A. 230, 480). A further ground was that, with the Senate Committee holding the books and records of the Local, the Local was unable to defend itself (J.A. 230, 536).[7/]

With respect to the impropriety of the panel as alleged by Appellants (App. Br. 69), General Counsel Williams agreed that it was proper under Article VI, Section 5(a) to appoint a public member to the panel, or an outsider, and Mr. Bergan so testified under oath. (J.A. 575). Individuals not members of the Teamsters have served as panel members, for it has been the custom and practice to have one of the staff of the House lawyers as a panel member (J.A. 478-534). Because of the nationwide publicity given to this case and to assure proper evaluation of evidence and the protection of the individual members, the Monitors recommended the appointment of a public member to the hearing panel (J.A. 478). And the Teamsters agreed to the appointment of a public member (J.A. 227, 572-574). Moreover, there is no evidence in the record that the injunction granted by the lower court was based on this particular point. In fact, statements were made by Judge Chudoff during the course of the injunction hearing in Philadelphia Common Pleas Court which indicate that he was of the opinion that there was no merit to this objection.[8/]

The second ground urged in the injunction proceedings, namely, that the Local's books and records were necessary to

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7/ The Teamsters state in their Brief at p. 70 that in order to expedite the trusteeship proceedings, they retained counsel to seek return of the Local's books. This statement can only be made to establish their prophetic clairvoyance since Civil Action No. 188-58, the suit brought to obtain the books, was initiated on January 28, 1958, five months before the Monitors: recommendation was made, three months before the disclosures of the Senate Select Committee, indeed a week before the monitorship was established.

8/ (Transcript of September 17, 1958, Proceeding before Judge Chudoff, Common Pleas Court of the City of Philadelphia, pp. 40-43).

a proper defense in the case, illustrates the bad faith of the Teamsters. When Mr. Williams was making his presentation to the court in oral argument, he stated, relative to securing the return of the books and records on behalf of 107, as follows:

> Mr. Williams: "Now, your Honor, I myself, secured counsel, I don't know whether the Chairman knows this or not, for 107. I secured one of the ablest lawyers of this bar to get those books and records back from the McClellan Committee, so that the hearing in Philadelphia could go forward and when all of his implications failed, he finally had to file a suit in this court to get those books and records back, so that a hearing could be conducted in Philadelphia because the people who were charged, were claiming they couldn't defend themselves unless they had their books and records.
>
> Mr. O'Donoghue: "You can stop right there, and if that is all that is stopping the filing of charges, Mr. Kennedy, the counsel of the Select Committee will turn the books over to my possession so that these charges can be filed and hearing had. If you had asked me that before, you could have had them so we could have had the charges filed.
>
> Mr. Williams: "Your Honor, we filed a law suit to get them and I am delighted to accept this offer from the chairman, because as counsel must know, a Court in Philadelphia, over objection of lawyers from the International, issued an injunction or a temporary restraining order, restraining the hearing from going forward. The thrust of the position of these charges of the officers was that they didn't have at their command or available to them the books and records of 107 which they needed to defend themselves." (Tr. 89).

Later, while the Monitor Chairman was testifying, he objected to a statement made by the Teamster General Counsel that the books and records were not available. (Tr. 112). The Chairman made the following statement in the record:

> Mr. O'Donoghue: "Now, look, we can straighten that out now. I will get you the books and records from the Senate Select Committee and I will put them in your possession, and will you file the charges?
>
> Mr. Williams: Yes.
>
> Mr. O'Donoghue: All right, then, that's done.
>
> Mr. Williams: I will prepare them.
>
> Mr. O'Donoghue: All right, fine. (J.A. 480).

Chairman O'Donoghue further testified that he had contacted the Senate Select Committee and that he could get the books and records. The Monitors stated to the Court below that the Senate Committee has, through Robert Kennedy, Esquire, Chief Counsel, advised that the books and records of 107 would be turned over to the Chairman of the Board of Monitors so that Local 107 might use them in the preparation of their defense to the charges. The books and records would then be returned to the Committee. (J.A. 510). However, although the Teamster General Counsel stated he would prepare charges, the Board of Monitors has not to date been notified that this has been done, nor has he taken steps to have the Philadelphia injunction dissolved.

The record further reveals that Mr. Bergan, counsel for the Teamsters, testified that there actually was no merit to the three objections raised by Local 107 as follows:

> Mr. O'Donoghue: "Let's take these up seriatim: First, let's take the first objection -- you don't have the books and records -- that's going to be obviated, isn't it?
>
> A. I think so.
>
> Q. All right. Let's take the second one. That is, that Cohen is an International officer?
>
> A. I think that is without merit.
>
> Q. "That's correct. We concede that. And third, that Monitors, the Board of Monitors have prejudged and coerced General President Hoffa into filing charges -- there's no merit to that either, is there?
>
> A. Even if there is, it's the General Executive Board who's going to decide on whether this thing goes into trusteeship, or the General President, not the Board of Monitors. (Tr. 451-452).

The cross-examination of Mr. Bergan shows that the Monitors, prior to the report of Price Waterhouse on Local 107, had agreed to get the books and records from the Senate Select Committee for 107 and this offer appeared in the minutes of the meeting of July 21, 1958 of the Board of Monitors. Mr. Bergan testified:

> The Witness: I understand that to be the basis of the objection of the officials of 107 (getting the books and records) one of the two major objections.
>
> Q. Well, just this question to you, Mr. Bergan: You notice it is in the minutes of the Board of Monitors, I think they are dated July 21st, 1958, in which it is said that the Chairman would use his good offices to get the books and records from the Senate Select Committee.
>
> The Witness: "I read that; yes, sir." (J.A. 579).

The Minutes of the Board of Monitors' meeting of July 21, 1958 (Def. Exh. 20, Initial Report of the Board of Monitors, p. 126) shows the following entry:

> It was also decided that Chairman O'Donoghue should use his good offices with the Senate Select Committee to have the books and records of 107 released to the Local officers in order to expedite the trusteeship proceedings.

and there was discussion between the Board of Monitors and the Teamster General Counsel around July 21, 1959, with a view to obtaining the books and records for Local 107 for use in its defense of the charges to be filed for trusteeship of Local 107.

When Mr. Bergan was pressed as to whether he was aware that Local 107 would object to the hearing because it was without the books and records when the September 8, 1958 letter was sent by Mr. Hoffa, Mr. Bergan stated that he did not give any thought to that particular subject and that he could not give any reason why he did not call the Chairman and tell him that an investigative panel was being sent out. (J.A. 579-580).

The following colloquy occurred:

> Q. Why didn't you call and tell me, as Chairman, that you were sending this panel out?
>
> A. I can't tell you why we didn't. I don't know. This was a very hurried period, as you recall. It was the end of the Senate Select Committee's processing of the charges against the Teamsters. Frankly, I can't tell you why we did, or why we didn't.
>
> Mr. O'Donoghue: All right. We'll go to this next case, now that you have testified.

> Mr. Bergan: I think -- I'm sorry -- I didn't mean to interrupt -- I think that I would be the first one to admit that I have made a very, very bad mistake, if the thrust of the objection of 107, was as to the propriety of this type of hearing panel, and I'll still agree that perhaps it might have been a somewhat inartistic way to do it." (J.A. 580).

Mr. Bergan testified, when later pressed on cross-examination about preparing the letter of September 8th, addressed to Raymond Cohen, that he did not discuss with Mr. Hoffa whether or not charges should have been filed as provided by Order of Recommendation No. 4. (J.A. 595). Nor did he tell Mr. Hoffa that counsel for the Teamsters had an agreement with the Board of Monitors that charges were going to be filed. (J.A. 596). Nor did he tell Mr. Hoffa that the Board of Monitors had sent Mr. Bergan a legal memorandum which set forth the case law on the subject to the effect that there must be written charges and a notice of hearing before a local union can be placed in trusteeship. Mr. Bergan testified that he did not think he had told Mr. Hoffa of these requirements set forth in the memo. (J.A. 596) Mr. Bergan, who prepared the letter of September 8, 1958 with Mr. Hoffa, testified concerning his conference with Mr. Hoffa on the matter, as follows:

> Mr. O'Donoghue: Can you tell us what you did discuss with him (Hoffa) other than the Price Waterhouse report?
>
> Mr. Bergan: No, sir; I don't believe I can. I think, if my memory is correct, that Mr. Hoffa told me that the panel was scheduled to go to Philadelphia on the 11th, and that the people in Philadelphia had been apprised of a hearing on the 11th. And then -- now, this is -- I'm just relying on memory, and we have talked about this case frequently in lots of contexts since then -- so I'm not absolutely sure of this -- then we looked through the files of the International, or had someone look through it, and realized that someone had slipped up somewhere, and there had been no prior notice to the people in Philadelphia.
>
> Q. When was that slip-up discovered?
>
> A. That day.
>
> Q. What day was this?

A. I think it's the date of that letter -- September 8, I believe.

Q. September 11, 1958? (J.A. 596).

A. I believe it's the 8th. That left us in a situation where we were sure to be enjoined if we went along that way, it seemed to me.

Q. What do you mean you were 'sure to be enjoined'? By sending a trusteeship panel to Philadelphia?

A. Yes.

Without any warning at all. Without any hearing. You know, without the ten-day notice of time and place that is required by the Constitution. Rather than cancel the panel, that was going up there, I suggested this preliminary hearing, that stated -- the preliminary investigation of the panel -- it is stated in the letter; and I think that is probably the way that came about. I discussed at that time, rather than cancel the panel entirely, since the arrangements had been made and somebody had slipped up somewhere, I don't know where -- we were unable to find record of notices to the people in Philadelphia. So we sent them up there to this preliminary investigation. The idea being --

Mr. O'Donoghue: I'm sorry -- go ahead . . . .

Mr. Bergan: The idea being that perhaps we could straighten out some of these difficulties, some of these discrepancies between the two reports. I have always thought that as far as Philadelphia was concerned, that it would be to the benefit of all if we could simplify this situation. And by this I mean that if there are fifty things that are charged, that are sufficient to put the local -- now, this is just a rough example -- if there are fifty things that are charged to enable the International to put this Local into trusteeship, and any one of them are sufficient, why go ahead on the fifty charges if you can do it on one -- that is the sort of thing I had in mind when that letter was written.

Mr. O'Donoghue: Don't you think, Mr. Bergan, you should have come to the Board of Monitors and discussed it before you sent this letter out?

Mr. Bergan: Hindsight might have dictated that, Mr. O'Donoghue. We were --

Mr. O'Donoghue: Well, you admit then that you were wrong --

Mr. Bergan: I admitted that this morning, sir. (J.A. 597).

Price Waterhouse in its report to the Board of Monitors stated that its report should be evaluated in the light of the fact that the officers of Local 107 invoked the Fifth Amendment before the Senate Select Committee and that they could not invoke the Fifth Amendment when called before an intra-union tribunal. (J.A. 575-576). Price Waterhouse quotes the statement of John Carroll, an attorney for Local 107, telling the Senate Select Committee that the officers could not invoke the Fifth Amendment before a union tribunal. (See Monitors' Ex. 30, p. 3).

Mr. Bergan testified that this matter was discussed by Mr. Williams and Mr. Bergan with the Monitors, that it was agreed with Chairman O'Donoghue to have a panel appointed to hear the charges and that at the hearing these officers could not invoke the Fifth Amendment before the union tribunal. (J.A. 575-576).

The sending of the panel without filing charges and giving the required notice of hearing, the testimony of Counsel for the Teamsters about a "slip-up," his admission that the Teamsters were wrong in what they had done, his lapse of memory concerning his conversation with Mr. Hoffa on the matter, and the failure of the Teamsters to explain this suspicious transaction is evidence of bad faith. (J.A. 230, 535-536, 595-599).

The constitutionality of the General President's placing a local union in trusteeship is beyond question (Article VI, Sec. 5, of the International Constitution -- J.A. 299), and General Secretary-Treasurer English assured the Senate Select Committee on April 18, 1958, that he had full power to investigate the books and records of Local 107 and would investigate the whole thing from top to bottom. 9/

There was evidence from which one could reasonably conclude that there had been the commission of acts of dishonesty, misappropriation or mishandling of union funds

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9/ Hearings before the Senate Select Committee on Improper Activities in the Labor or Management Field, p. 10702 (April 18, 1958).

and that the financial affairs of Local 107 were not being handled for the best interests of the members. Immediate action was called for by the Teamsters, independently of Monitor recommendations, in order to insure the protection and enforcement of the rights of individual members in accordance with the obligations they had assumed under Section 3 of the Consent Order and their obligations under Section 5 to check improper accounting procedures and to require persons having custody of funds to adhere to the obligations imposed upon fiduciaries.

Order of Recommendation No. 4 called for the performance of the obligation placed upon Teamster General President Hoffa by Article 6, Section 5 of the International Constitution (J. A. 299). In order to protect the rights of the members of Local 107 charges for the appointment of a trustee should have been filed by General President Hoffa independently of any recommendation from the Board of Monitors. Indeed, Secretary-Treasurer English admitted before the Board of Monitors that a trusteeship hearing should be held, and he admitted before the Senate Select Committee that he would investigate the entire matter of Local 107. Section 5 of the Consent Order places the obligation and duty upon the Teamsters to review and where needed establish proper auditing procedures, controls and safeguards in consultation with the Board of Monitors. The mishandling of Union funds, as revealed by various forgeries and cashing of forged checks in Local 107 called for affirmative acts by General President Hoffa in the form of filing charges for appointment of a trustee to correct the financial abuses and mishandling of Union funds in Local 107. The standards imposed upon Local Union officers as fiduciaries by Section 5 of the Decree were not being observed. These officers invoked the Fifth Amendment before the Senate Committee. They should be called upon to render an accounting as fiduciaries under Section 5 of the Decree in a trusteeship proceeding and to explain and answer the charges with respect to the forgeries and mishandling of Union funds for personal gain and profit, as well as the acceptance of monetary gifts from an employer in exchange for favorable contract terms.

Order of Recommendation No. 11

On June 17, 1958, the Board of Monitors issued Order of Recommendation 5A, requesting the General President's office to withhold releasing locals from trusteeship until the Board of Monitors had an opportunity to investigate and consult with the General President concerning the establishment of uniform election procedures for locals in trusteeship. (J. A. 211). The Order also stated that William C. Humphrey was being sent to investigate election procedures in Local 245.[10] (J.A. 211). This local, a trusteed local, had already conducted nominations for new officers. Mr. Humphrey's investigation revealed that, because of an improper interpretation of the International Constitution, only 71 out of 1500 members were eligible to run for office. Rounds and Wainwright, the two officers appointed by General Trustee Gibbons, had practically no opposition. Members who had been nominated and were clearly eligible to run against them were ruled ineligible. (J.A. 322, 487-488). After the rulings on eligibility, only one nominee was left in the election against Rounds, and none against Wainwright. (J.A. 118). The principal officer of the local union had been convicted of a felony and the officers in charge of the local union, appointed by General

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[10] Local 245 was the first local union scheduled to be released from trusteeship after Mr. O'Donoghue's appointment as Chairman. (J.A. 488). Prior to Mr. O'Donoghue's appointment 41 local unions had been removed from trusteeship but without any investigation by the Monitors and, as events in Local Union 245 revealed, probably without adequate safeguards.

President Hoffa, were not bonded in accordance with the requirements of Article X, Section 8(a) of the International Constitution. (J. A. 213, 304, 333, 481).[11] Further, an inspection of the auditing reports from the officers of this local to the International indicated an audit was necessary. (J.A. 488).

Accordingly, the Board of Monitors issued Order of Recommendation No. 11 which provided in part:

> The Board of Monitors, therefore, recommends to the General President that the election of officers for Local 245 scheduled for June 27, 28, 29 be postponed indefinitely; that the nominations conducted be cancelled and set aside because clearly members eligible for nomination for office were declared ineligible; and that the method and manner of conducting the nominations were contrary to the Constitution. The Board of Monitors recommends that a new date for nominations be set; that posting of notice for nominations be set at least one month in advance; that a list of all eligible men to run for office be posted simultaneously with the posting of the time, date and place of nominations; that a meeting for nominations be held on a Sunday afternoon beginning at 2 P.M. in an appropriate place in the City of Springfield, Missouri; that the Board of Monitors will also send a Field Examiner to check the lists of eligibility for nominations in the local union.
>
> The Board of Monitors will also recommend that Price Waterhouse conduct a two year audit of books and records of this local union because no certified audit has been made of the books and records of said local union for a long period and no surety bonds have been posted by the officers handling monies.
>
> The Board of Monitors issues this order pursuant to 211-213 Section 3 and Section 7 of the Court Order. (J.A. 332-333).

General President Hoffa called off the election of officers in Local 245 and, further, stated that the books of the local could be audited. (J.A. 213-481, 549-550). However, the officers of the local refused to permit Price

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[11] To be eligible for office, a member must be in continuous good standing for a period of two years prior to his nomination. The good standing provision of the Constitution is a matter in controversy but even the International has agreed that, under the 1952 Constitution, in the case of trusteed local unions, despite the failure of an employer to pay the dues of a member on or before the first of the month, a member is still in good standing. Thus members of Local 245 on checkoff were improperly declared ineligible for nomination (See J.A. 358-359, 568-570; Tr. 849).

Waterhouse to conduct an audit. (J. A. 482-483). General President Hoffa was well aware of this refusal but did not order compliance, although he and General Secretary-Treasurer had ample constitutional authority under Article X, Section 11 (a), (c) and (d) to order the audit. (J. A. 214, 481-483, 489, 585-587). Further, as a trusteed local, Local 245 was under the direct supervision of the General President. (J. A. 482, 489, 586). So flagrant was the failure to comply with the Monitors' recommendation that the Teamsters General Counsel, in his closing argument to the Court below, made the following statement:

> .../O/n this order, we are wrong to this extent: I agree with the Chairman that after there had been a refusal and a persisted refusal, they should have removed those officers in 245 from office, and that was not done; and to that extent, I would have to confess guilt on the part of the International with respect to this order. (Tr. 828). 12/

In the light of this confession of guilt and statement that the Local's officers should have been removed for not permitting the audit, it is difficult to understand the Teamsters' argument in their brief at pages 70-71 that they should not have been expected to invoke their admitted constitutional authority to require the officers of the local to permit the audit. Nor is there any merit to the Teamsters' argument that the Monitors' petition to the District Court for a ruling on the applicability of Federal Rule 23 (c) has a bearing on the propriety of the District Court's finding of bad faith on the Teamsters' part in not requiring the local to permit the audit. It was on September 17, 1958, that the Monitors reported to the Court that the Teamsters had not complied with the Monitors' recommendation of June 27, 1958 that the audit be conducted;

12/ At another point the Teamster General Counsel stated to the Court below that it would be his recommendation "that the audit go forward." (Tr. 828-829).

it was not until September 30, 1958 that the Monitors petitioned the Trial Court to rule concerning 23(c).

Order of Recommendation No. 11 was a critical recommendation for the Board of Monitors because, through it, the Monitors hoped for the accomplishment of two major objectives: first, the establishment of a uniform election procedure for the release of trusteed local unions and, secondly, the compilation of information for developing uniform auditing procedures that would ultimately be recommended for incorporation in model by-laws. (J. A. 213-214, 488-489, 588-589). The Price Waterhouse audit was also meant to aid in determining eligibility for voting and nomination in Local 245 and in establishing the cut-off date when the local would return to autonomy and enter a new fiscal period. (J. A. 214, 481, 488-489).

Order of Recommendation No. 11 was not only reasonable and relevant to the basic provisions of this Consent Order but critically so. Local 245 provided the golden opportunity for the Board of Monitors and the Teamsters to fulfill jointly their obligations and responsibilities with respect to uniform and democratic election procedures under Section 3 of the Consent Order; the incorporation of election procedures and auditing procedures into by-laws under Section 4; the establishment of uniform auditing procedures for trusteed locals under Section 5; and the removal of locals from trusteeship with all deliberate speed under Section 7. But, as the trial court has found, Order of Recommendation No. 11 proved only the starting point of trouble and conflict between the International officers and the Board of Monitors. This was one of the first major steps taken by the Board of Monitors to enforce and strengthen the rights of the members and the subordinate bodies under

Sections 3 and 5 by the establishment of democratic election procedures and proper auditing safeguards, but, as the trial court has found, the Board of Monitors were met by a bad faith refusal even to permit a Price Waterhouse audit of the books and records of Local 245 (J. A. 214-215).

Order of Recommendation No. 12

John McNamara, President of Trusteed Local 295 and Secretary-Treasurer of Local 808, had been convicted with Johnny Dio of the crime of extortion. (J. A. 335). On July 10, 1958, the Board of Monitors recommended to General President Hoffa that pending his appeal, McNamara be requested to take a leave of absence from his union offices. (J. A. 231, 335, 485). After a lapse of two months, after repeated requests by the Board of Monitors that their recommendation be implemented, and after Mr. Hoffa had conferred with Mr. McNamara the night before by telephone, Mr. Hoffa on August 12, 1958 wired Mr. McNamara as follows:

> "In accordance with our telephone conversation of last night and pursuant to the recommendation of the Board of Monitors, I am requesting you to take a leave of absence." (J. A. 485, Monitors' Ex. 20(a), re Ex. 12, wire of Hoffa to McNamara dated August 12, 1958).

On August 27, 1958, Mr. Hoffa informed the Monitors that Mr. McNamara had advised that he would resign as Secretary-Treasurer of Local 808 on September 15, but that he declined to take a leave of absence from his office in Local 295. (Monitors' Ex. 20(a) re Exhibit 12, letter of Hoffa to O'Donoghue, dated August 27, 1958). McNamara, however, is still serving as an officer of both Local 808 and Local 295 and states that the membership of Local 808 on September 16, 1958 refused to accept his resignation or leave of absence. (J. A. 233-234, 485, 553).

The portion of the Order dealing with McNamara was clearly constitutional, for Article XVIII, Section 13(a), provides for the removal from membership of an individual convicted of a crime. (J. A. 309, 483). Since Local 295 was a trusteed local under the direct supervision of the General President, he clearly had the authority to remove McNamara. Moreover, the General President could have directed McNamara to take a leave of absence from his office in Local 808. Officers of local unions are endowed with great authority and power and are the contact between the public and the membership. It is only reasonable that, upon conviction of a serious crime, such as extortion, an officer be required to take a leave of absence pending his appeal.

The members of Locals 808 and 295 had a right to have enforced the constitutional guarantee of Article XVIII, Section 13(a). (J. A. 309). [13] Under Sections 3 and 5 of the Consent Order, it was the obligation of the General President "to enforce" the members' right and the responsiblity of the Monitors to make this recommendation. With respect to Local 295, a trusteed local, the Board of Monitors had the authority under Section 7 to make recommendations consistent with the best interests of the membership and the

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[13] Article XVIII, Section 13(a) provides that "when a member is convicted of a crime or serious wrongdoing. . . it shall be the duty of the Local Union to proceed to revoke his membership . . . whenever a member . . . is engaged in what is commonly called racketerring. . . and is found guilty thereby bringing dishonor upon the Local Union . . . it shall be the duty of the Local Union . . . to revoke the membership of such member."

A New York Appellate Court has construed Article XVIII, Section 13(a) to the effect that a member can be expelled from membership after conviction of a crime even when out on bail pending appeal. See Daley v. Stickel, 2 App. Div. 2nd 287 (N.Y.), 38 LRRM. 2709 (1956), and Daley v. Stickel, 178 N. Y. 2d 643, 42 LRRM 2297 (1958). Nevertheless, the General President has always construed Article XVIII, Section 13(a) to mean that it should not be invoked until after a convicted member's appeal has been decided. (J. A. 482, 572).

General President had the obligation under Section 7 to take action consistent with the best interests of the membership. Without question, Order of Recommendation No. 12 was in the best interests of the membership of Local Union 295.

The second portion of Order of Recommendation No. 12 deals with recommending a one-year audit of the books and records of Locals 808 and 295. (J. A. 231, 335). This Order was issued after a committee of members of Local 808 appeared before the Monitors and stated that they had never been able to get a full, fair and complete audit from the officers of this local. The members of Local 808 had previously addressed a letter to General President Hoffa asking for an audit of the books of the Local and the removal of Mr. McNamara, but General President Hoffa had ignored their request and their letter remained unanswered. (J. A. 232, 483). Various documents were presented, showing a discrepancy between the report of assets filed with the Secretary of Labor under the Taft-Hartley Act by the officers of Local 808 and the audit report which these same officers rendered to the membership. (J. A. 232, 483).

General Counsel Williams advised the Board of Monitors that General President Hoffa had instructed these two local unions to permit the auditing of their books and records by Price Waterhouse. (J. A. 484-485). However, all efforts of a Price Waterhouse representative to secure permission from the officers of this local union to make an audit were futile. (J. A. 232-233, 336-337, 354, 484-485). The auditors made repeated efforts to commence the audits, but were told that McNamara was "too busy" to talk with them (J. A. 232, 354), and on August 13, 1958, a Price Waterhouse representative reported to the Monitors that the firm could no longer afford to keep its auditors committed to this vain assignment because the prospects were that the delay may be of indefinite duration. (J. A. 232-233, 354). The Court very properly found that General President Hoffa acted in bad faith in refusing to take any adequate affirmative action relative to the auditing of these local unions although he admittedly had the power to order the local unions to permit the audits. See the provisions of Article X, Section 11, (a), (b), (c), and (d) of the International Constitution. (J. A. 233, 303-304). With respect to trusteed Local 295, see also Article VI, Section 5 (b), (c), (d) and (e). (J. A. 300-301).[14/]

Under the circumstances, the recommendations of audits of Locals 295 and 808 were clearly reasonable and relevant to the obligations placed upon the Teamsters and the Monitors by Sections 3, 4, 5 and 7 of the Consent Order. Under Section 5, the Teamster General Executive Board, in consultation with the Monitors, is required to review local union auditing procedures and financial problems. Further, without an examination of the books of local unions equitable and legal standards and obligations of fiduciaries cannot be imposed upon local union officers in accordance with the provisions of Section 5.

It is also necessary to have independent audits made of autonomous and trusteed locals in order that proper auditing procedures, safeguards and controls could be developed by the Monitors for recommendations to the Teamsters. Secretary-Treasurer English testified before the Senate Select

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[14/] The Teamster General Counsel admitted to the Court below that the audits were necessary and proper and that the Teamsters would see to it that the audits would go forward. (Tr. 465, 850. See also Petitioners' Motion for Stay, Appendix B, p. 5, lines 13-17).

Committee that the auditors of the International merely ask the amount of disbursements and do not attempt to verify whether or not the disbursements are authorized by the Constitution or the authenticity of same. 15/ Price Waterhouse and Co. reported there were only 75 Locals of the 890 of the International where there had been audits by Certified Public Accountants. 57 of the 75 audits covered the period 1957 or 1958. 17 covered periods earlier than 1957 and related to the years from 1949 through 1954. This illustrates the lack of independent auditing both by the International and the Local Unions. Price Waterhouse further reasoned as follows: "Among the findings of the Senate Select Committee which inquired into the Unions affairs is one which specifically asserts that auditing in the past has been little more than a formal ritual of adding up the figures and there is generally throughout the Committee's findings more than an inference of double dealing, favoritism and bias." (Defendants' Exhibit 20, p. 80).

Finally, available evidence indicated audits were needed and would have protected membership rights in accordance with the provisions of Section 3, would have added to the experience of the Monitors in the preparation of bylaws in accordance with the provisions of Section 4, and, with respect to Local 295, a trusteed local, would have served as a first step in its return to autonomy in accordance with the provisions of Section 7.

ORDER OF RECOMMENDATION NO. 14

On July 22, 1958, Price Waterhouse and Co. filed a report with the Board of Monitors, making certain preliminary recommendations with regard to the desirability

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15/ Testimony of Secretary-Treasurer English, Hearings before the Senate Select Committee on Improper Activities in the Labor or Management Field, p. 10699 (April 18, 1958).

of maintaining authoritative good standing records at the Teamster Headquarters. (Defendants' Ex. 20, pp. 141-149). The Board of Monitors, on July 24, 1958, forwarded a copy of this lengthy report to General Secretary-Treasurer English, and, in Order of Recommendation No. 14, requested and recommended that he "make a thorough study of it and place it on the agenda of the next meeting of the General Executive Board in order that the Board of Monitors and representatives of Price Waterhouse could discuss the contents of this report with the General Executive Board." (J. A. 234, 338). Findings of Fact 49 through 53 set forth all the important reasons why there needed to be good standing records at the Teamster Headquarters and why it was important for this matter to be discussed at an early date. (J. A. 235-240). However, the report was not placed on the agenda of the General Executive Board meetings of September 3 and September 16 (J. A. 485).

The Teamsters at page 77 of their Brief admit that they failed to comply with Order of Recommendation No. 14, [16] but they cavalierly characterize the controversy concerning the matter as being "inconsequential." We submit that it is anything but inconsequential in view of the findings of the Price Waterhouse Report that the General Secretary-Treasurer's office was not abiding by the provisions of Article X, Section 7 of the International Constitution (J. A. 304) and Article 22, Sections 10, 12 and 13

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[16] The Teamsters state at p. 77 of their Brief that the subject matter of the Price Waterhouse Report was discussed at a meeting of the General Executive Board without Price Waterhouse representatives in attendance and that the general matter was discussed at a later meeting, with Price Waterhouse representatives in attendance. This is an inaccurate and misleading statement, unsupported by record citation. There has never been a discussion of the Price Waterhouse Report at a General Executive Board meeting, as recommended by the Board of Monitors.

(J. A. 311), requiring the keeping of a record of the names and addresses of the various members of the union and the suspension and withdrawal of members. (J. A. 235-236, 240, 486).

The provisions of Order of Recommendation No. 14 were clearly reasonable and relevant to the Teamsters' obligations under Paragraph 5 of the Consent Order to review all financial and auditing procedures in consultation with the Board of Monitors (J. A. 239-240). The recommendation was also relevant to the drafting of by-laws in accordance with the provisions of Section 4 and the drafting of amendments to the International Constitution in accordance with the provisions of Section 11. Finally and most significantly, the establishment of a system of membership record keeping at the Teamsters headquarters would have been the strongest guarantee that delegates to the future conventions would be properly elected. Order of Recommendation No. 14 was thus clearly relevant to the Teamsters obligations under Section 3 of the Consent Order.

Counsel for the Teamsters stated in the Court below that they would comply with Order of Recommendation No. 14:

> Mr. Williams: I'll stipulate for the purpose of this record that we'll put this on the agenda immediately if that's the thrust of your objection on this order. And if necessary, have a meeting earlier to have a meeting with Price Waterhouse on this whole matter.
>
> Mr. O'Donoghue: That is what we have been waiting for, and I stated to the General Executive Board the night of September 16th.
>
> Mr. Williams: There's certainly no problem on that. (J. A. 555).

Order of Recommendation No. 16

The Teamsters' non-compliance with Order of Recommendation No. 16, which was issued by the Board of Monitors on August 15, 1958 (J.A. 241-243, 312-314), is a clear example of the failure and refusal of the Teamsters to carry out their obligations under the Consent Order.

Testimony adduced before the Senate Select Committee on August 6 and 7, 1958, disclosed that Vice President Owen B. Brennan and General President Hoffa managed Embrel Davidson, a boxer, under a partnership arrangement. Davidson testified under oath that he had been placed on the payroll of the Michigan Conference of Teamsters' Health and Welfare Fund from 1952 until 1954 as an investigator, and that although he did not do any investigating and never worked for the Health and Welfare Fund, he received $75.00 per week salary from the Health and Welfare Fund. Mr. Brennan pleaded the Fifth Amendment when questioned concerning his own income; income that went to General President Hoffa from gambling bets made at race tracks; the payments to Davidson from the Health and Welfare Fund; and his connection with the Test Fleet Co., a corporation formed in the maiden names of the wives of Vice President Brennan and General President Hoffa by officials of Commercial Carriers shortly after Mr. Hoffa had intervened and settled a Teamster Strike against Commercial Carriers. (J.A. 241, 312-314).[17]

In regard to these matters, the Board of Monitors recommended that (1) charges be filed against Brennan under Article XVIII, Section 3(d) of the International Constitution; (2) that

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[17] See also Hearings before the Senate Select Committee on Improper Activities in the Labor or Management Field, pp. 13398-13407, 13458-13499 (August 6-7, 1958).

Brennan be requested to take a leave of absence; (3) Price Waterhouse be instructed to conduct an audit of the Michigan Welfare Fund; (4) a thorough investigation be made of the Brennan charges; (5) Hoffa, because of his association with Brennan in the matter, disqualify himself from participation in the investigation, filing of charges or hearing on this case; (6) special outside counsel be employed to assist in processing the charges; and (7) the charging party disqualify himself from the hearing. (J.A. 242-243, 312-313, 318).

Two months after this Order was issued and one month after the Monitors had petitioned the District Court for enforcement, General President Hoffa stated he would file the charges, provided the Board of Monitors would withdraw its demand that Mr. Hoffa disqualify himself and its demand for outside counsel to investigate and assist in processing the charges. (J.A. 243-244, 493.) The Monitors' insistence on the disqualification of Mr. Hoffa is based on the fact that the charges should be drafted and filed by a disinterested party and Mr. Hoffa is not such a party. He was a business associate of Vice-President Brennan in managing Mr. Davidson and may be implicated in the misappropriation of the funds. Mr. Hoffa's testimony before the Senate Select Committee on August 7, 1958 (p. 13540) is evidence of the reasonableness of the Monitors' positions.

> Mr. Hoffa. In listening to the testimony this morning, I can state to the Chair and to the record that any money that was paid to Davidson, which I had no knowledge of, if it had any part of the right promotion in which I was a partner of Brennan, I firmly believe that the money should be immediately returned to the Health and Welfare Fund.
>
> Mr. Kennedy. Therefore, will you take steps to return your portion of that money?
>
> Mr. Hoffa. That is correct.

With respect to special counsel, the Monitor Chairman did not "brush" the Teamsters' constitutional objection aside "as of no consequence." (App. Br., p. 72). Instead he carefully pointed out to their General Counsel that Article XVIII, Section 1(b), on which they relied, has reference to the trial of "any member or officer of a Local Union," and hence is not applicable in the instant case inasmuch as the Monitors have recommended that Vice-President Brennan be tried as an International Union officer in accordance with the provisions of Article XVIII, Section 3(d), (J.A. 385). The Chairman also carefully explained that Section 1(b) provides that the accused is not entitled to be represented by outside counsel, and that it does not provide that counsel may not be retained to advise the accused. (Ibid.). The Chairman made it very clear that the Monitors were not recommending that the special counsel present the case against Mr. Brennan, but rather that the counsel should serve as an advisor to the charging party. It is, therefore, clear that the use of counsel, as recommended by the Monitors, would not have violated the International Constitution. The difficulty was simply that the Teamsters were using their objection as a rationalization for not processing charges against a favorite son of the present administration.

As to the audit of the Michigan Conference Welfare Fund, it may well be true that the Teamsters do not have exclusive jurisdiction over the Fund, but had they been in good faith, they certainly could have used their good offices to arrange for the audit. The Teamsters could have instructed the Local Unions in Michigan, whose members were Trustees of the Health and Welfare Fund of the Michigan State Conference of Teamsters, to order the Trustees representing the Local Unions to call a meeting of the Trustees of the Health and Welfare Fund and request an audit of that Welfare Fund by Price Waterhouse. It is customary for International Unions cognizant of information concerning mishandling of Health and Welfare funds to instruct their Local Unions to order the Trustees selected or appointed by the Local Unions to permit audits to be made of the Health and Welfare funds by independent auditing firms, which are sometimes designated by the Internationals.

Order of Recommendation No. 16 was relevant to the Teamsters' obligation under Section 5 of the Consent Order to require that all persons having custody or management of funds or properties be held to standards of fiduciaries and to their obligation under Section 3 to enforce and protect the rights of members and subordinate bodies under the Constitution. Theft or misappropriation of trust funds through fraud and deceit is a crime and clearly a violation of the International Constitution. See Article XVIII, Section 6 (2), (3), (4), (6), (10) and (12) of the International Constitution. (J.A. 308). The rights of members of the Union can never be adequately insured under Section 3 of the Consent Order if individuals like Vice-President Brennan, standing in places of great trust and responsibility in the Union, can be immune from charges and not be brought to trial for the illegal use and misappropriation of health and welfare trust funds.

Order of Recommendation No. 17

The evidence of reputable witnesses before the Senate Select Committee disclosed that Feldman, Business Agent of Local 929 of Philadelphia, had approached a Mr. Friedman, a food salesman in Philadelphia, to advise Horn and Hardaart that Feldman would settle a strike for the payment of $50,000. The evidence also disclosed that Feldman made a "sweetheart agreement" with the Dewey Restaurant chain in Philadelphia, for which, he was paid some $750 by the employer. Feldman also had a long criminal record of six convictions. (J.A. 245-246, 320-321).[18]

The Board of Monitors recommended that the General President file charges under Article XVIII, Sections 10 and 13(c) of the International Constitution, take immediate jurisdiction of the case and, pending a hearing, suspend Feldman from office. The Board of Monitors further recommended that the Dewey Restaurant chain incident be investigated. (J.A. 245-246, 320-321).

The General President advised that he had suspended Feldman and that he had appointed a panel to conduct a hearing. This was early in October. A scheduled hearing was adjourned because of "certain constitutional problems," according to the testimony of counsel for the Teamsters (J.A. 559), but it appears that the trial has never been resumed. Nor has the General President ever made an investigation into the Dewey matter and filed a report with the Board of Monitors.

The General President admittedly had authority to effectuate the provisions of Order of Recommendation No. 17 under the emergency powers of the General President set forth in Article XVIII, Section 13(c). (J.A. 308-309). The suspension from office by the General President of a local union officer guilty of wrong-doing is provided for in Article XVIII, Section 1(d). (J.A. 307).

Sections 3 and 5 of the Consent Order imposed independent obligations upon the Teamsters to take the action recommended by the Monitors. The protection of the rights of the members can never be insured if officers and employees such as Feldman are not required to render an accounting of their senior stewardship. Nor are the Teamsters adhering to the recognized legal and equitable standards and obligations imposed upon fiduciaries if they do not require such an accounting.

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[18] See also Senate Select Committee on Improper Activities in the Labor or Management Field, pp. 10705-10752 (April 22, 1958).

Order of Recommendation No. 18

On August 18, 1958, the Board of Monitors recommended to General President Hoffa that all Orders of Recommendation, beginning with Order of Recommendation No. 15, be published in *The International Teamster,* the official monthly organ of the International Brotherhood, and that a 500-to-1000 word monthly report by the Board of Monitors of their activities be published. (J.A. 249, 339).

Initially, the General President agreed to the publication of the various orders. (J.A. 249, 501). Then after waiting until August 27, 1958, the General President stated that because of the publication schedule it was "impossible" to comply for the September issue. (J.A. 250-251, 502-503). This was not accurate. In a September 2, 1958 letter, General President Hoffa admitted to the Monitors that the September issue was not printed until August 29-30, and about August 20 the Board's Executive Assistant was informed by the magazine's editor and an International attorney that the deadline date for the submission of material for the September issue would be between August 27 and August 30 -- nine to twelve days after the issuance of the Board's recommendation. (J.A. 250-251, 503-506).

In his letters of August 27 and September 2 Mr. Hoffa expressed his readiness to have International representatives discuss the insertion in the October issue of any material the Monitors might desire. (249-250, 502-503, 505-506). On September 11 the Board's Executive Assistant met with the magazine's editor. (J.A. 504, 510). Within the following two days the Board made it clear to the Teamsters that the Orders of Recommendation should be published verbatim beginning with the October issue, and that it could be assumed that there would be publication in the absence of any further notification from the International. (J.A. 250, 504). The International was never heard from again.

The October issue appeared. (Monitors' Exh. 56). It contained a full-page attack on the Monitor Chairman. It contained a full-page attack on Member Schmidt. It contained a full-page discussion of the Union's response to the Board's Court Petition. It contained not one single line on the Monitors' Orders of Recommendation. Thus, after much evasion and technical objections, the Teamsters never published any of the Orders of Recommendation.

Order of Recommendation No. 18 was necessitated by the many untrue statements that had been printed in The International Teamster concerning matters that fell within the purview of the Monitors. See the news item, concerning Local 107 in the August issue (J.A. 228, 500-501, Monitors' Exh. 44, p. 10), the news item concerning the Joint Council 13 election dispute in the August 1958 issue (J.A. 247-248, 496-498, Monitors' Exh. 44, p. 7), and the evasive retraction in the September issue (J.A. 248-249, 500, Monitors' Exh. 47, p. 16).

This recommendation was reasonable and necessary in view of the false and erroneous reports printed in the monthly magazine. Instead of printing the Orders of the Board, the trial court found that, in the October and November, 1958, issues of The International Teamster, the Teamsters entered upon a campaign of viligication against the Board of Monitors. (J.A. 251, Monitors' Exh. 56).

Order of Recommendation No. 18 was relevant to the obligations of the Teamsters and the Monitors under Section 3 of the Consent Order because, by making use of the magazine to inform the membership of the activities of the Monitorship, the Board of Monitors would be insuring the enforcement and protection of all rights of the individual members and subordinate bodies and effectuating the objects and purposes of the Consent Order. If the Monitorship is to be completely successful, it is essential that the rank and file Teamster members be kept fully informed of the Monitors' steps to safeguard individual rights in the Union.

Further, under Section 12 the General Executive Board is required to make available to the Board of Monitors such "clerical and technical help as is reasonably required and necessary." Under the circumstances, the monthly magazine was a reasonable and necessary form of technical help in circulating and printing the true facts concerning the Orders of Recommendation of the Board of Monitors and the manner and method in which the Board of Monitors is carrying out its duties under the Court Order.

Order of Recommendation No. 19

Testimony before the Senate Select Committee on December 17 and 18, 1957,[19/] and again on August 7, 1958,[20/] as well as testimony before the Senate of the State of Tennessee, disclosed that Glen W. Smith, as President, and H. O. Boling, as Secretary-Treasurer, of Local Union No. 515, of Chattanooga, Tenn. had used $20,000 of local union funds in order to "fix"

[19/] Hearings before Senate Select Committee on Improper Activities in the Labor or Management Field, pp. 7431-7451 (December 17, 1957) and pp. 7453-7509 (December 18, 1957).

[20/] Hearings before Senate Select Committee on Improper Activities in the Labor or Management Field, pp. 13517-13521 (August 7, 1958).

a criminal case involving thirteen officers and members of that local union. (J.A. 324). The Board of Monitors recommended to General President Hoffa that by August 25, 1958, he exercise his emergency powers, under Article XVIII, Section 10 of the International Constitution, and file charges for expulsion from membership against Smith and Boling, for misappropriation of union funds, etc., and that Smith and Boling be immediately suspended from office. (J.A. 251, 325). It was further recommended to the General President that Price Waterhouse be instructed to audit the books of Local 515; that the General President conduct a thorough investigation into the borrowing of $13,500 by Local 515 from the Southern Conference of Teamsers; and that if the investigation should produce evidence of wrongdoing on the part of any officers of the Southern Conference, appropriate charges should be filed against them. (J.A. 252, 325).

During the course of the trial, Counsel for the Teamsters testified that Smith and Boling had been suspended from office. (J.A. 559). However, the Board of Monitors has learned since the close of the hearing before the District Court that Smith and Boling have never been suspended by General President Hoffa and that sometime in January 1959, Smith was convicted by a Federal District Court of income tax evasion. It appears that Smith has taken a leave of absence--after his conviction--but Boling is running the local Union today. Counsel for the Teamsters further testified before the District Court that a panel had been sent to Chattanooga to hear the charges against Smith and Boling. (J.A. 561-562). However, the Board of Monitors has never received any panel report; in fact, it has been advised that no panel hearing has ever been conducted.

The General President clearly had authority under Article XVIII, Section 10 (J.A. 308-309), to assume original jurisdiction and to have a hearing conducted on the charges against Smith and Boling, and he had authority under Article XVIII, Section 1(d) (J.A. 307), to suspend them from membership or office until a decision had been rendered in the case.

The provisions of Order of Recommendation No. 19 concerning Smith's and Boling's activities and the loan from the Southern Conference were relevant to the obligations imposed on the Teamsters and the Monitors by Sections 3 and 5 of the Consent Order, for the same reasons advanced above with respect to Order No. 16 and No. 17. See supra, pp. 54-56.

Order of Recommendation No. 20

On August 19, 1958, the Board of Monitors recommended the promulgation of certain rules to govern the conduct of Local Union elections. (J.A. 252-253, 340-344).

The election rules, which were to apply to both trusteed locals and autonomous locals, provided in paragraph 2 that prior to nomination meetings, lists of those members eligible for nomination should be compiled and posted. (J.A. 342). The Board of Monitors felt this necessary in view of their experience that nominations would be made without the membership having knowledge of who was eligible, and members would be nominated only to be later declared ineligible. The problem was particularly critical inasmuch as the restrictive interpretation placed upon the pertinent sections of the 1952 International Constitution by the Teamsters rendered most members on check-off ineligible to run for office.

Article II, Section 4 of the International Constitution requires that a member must be in continuous good standing for a period of two years prior to nomination or he is ineligible to run for office. The largest portion of all the

Teamster Union membership is on check-off, that is, under the terms of the collective bargaining agreement, their employer agrees to remit to their local union their dues on or before the first day of the month. The Teamster general officers and most local unions have construed Article X, Section 5(c) of the 1952 Constitution to mean that if the employer did not forward the dues of a member to the local on or before the first day of the month, the member was not in good standing and was accordingly ineligible. This has resulted in large numbers of the membership being ineligible and incumbent officers having little or no opposition. Election laws should be liberally construed to favor franchisement instead of disenfranchisement. The Board of Monitors has advised the Teamsters that the restrictive construction is improper and discriminatory. Since the employer is the agent of the Union for the payment of the dues, if the employer does not get dues in on time under the check-off it is not the employee member's fault and the responsibility should lie with the Union. The Teamster General Counsel has agreed with such a construction of the 1952 Constitution (see footnote supra at p.41),but the Teamsters have applied the liberal construction only to some elections in trusteed locals.

Paragraph 2 of the election rules provides that in order that candidates running for office may campaign properly they should be given the names and addresses of the members of the local or given access to the Local Union's record. (J.A. 253, 342). Such a rule is necessary for democratic elections because the Teamster membership is spread out among a large number of employers over great distances, and this is especially so with respect to locals composed of over-the-road and cartage drivers.[21]

In these temporary rules the Board of Monitors recommended that the Honest Ballot Association conduct elections for trusteed locals as well as those elections to be conducted in the fall of 1958 in autonomous local unions. Under Section 8 of the Consent Order, the Honest Ballot Association or some similar outside agency, wherever practicable, is to supervise the election of delegates to the next convention. In order for the Honest Ballot Association to gain the necessary experience to assist the Board of Monitors in conducting and supervising the election of delegates to the next convention, the Board of Monitors felt that the Honest Ballot Association should supervise these elections in the trusteed locals as well as the fall, 1958, elections in the autonomous locals. The experience of the Honest Ballot Association would also have been of assistance to the Board of Monitors in writing democratic rules for inclusion in the model code of local union by-laws in accordance with the provisions of Section 4 of the Consent Order.

The general President was requested to appoint a committee by August 27,1958 to meet with the Board of Monitors to discuss the placing of these election rules in effect. Time was of the essence since nominations and elections in Teamster local unions take place in the fall. The Board of Monitors never heard from the General President until the morning of September 12, when a letter, dated September 10, advised the Monitors that "some rules violated the International Constitution and others were unworkable" and that the General President would take them up with the General Executive Board and let the Monitors know. The Monitors met with the General Executive Board on the night of September 16, 1958, for the express purpose of discussing the question of the calling a convention. However, the election rules were discussed. The minutes of this meeting (Monitors' Exh. 61) reflect the attitude of hostility and bad faith which General President Hoffa and the General Executive Board exhibited toward the Board of Monitors concerning democratic rules of election.

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[21] The necessity for the proposed rule can be illustrated by considering Local 107 in Philadelphia, which has 12,000 members (J.A. 542) and has territorial jurisdiction of Philadelphia and the area extending south below Wilmington, Delaware. Local 107's membership consists of small groups of drivers working at terminals, plants and warehouses. These places of employment are spread over a large geographical area and, generally, they are located around the outskirts of a city. The members would not know all of the members at the other terminal plants or warehouses, nor would they be acquainted with the membership in Wilmington. In an election in 107 (or in Local 299, Mr. Hoffa's Local in Detroit with 16,000 members) the incumbent officers would know all the members, whereas, candidates running against them would not know the members or where they worked. In order to have a fair and honest election, it would be necessary that a candidate for office have access to the union's list of members and their addresses.

The Trial Court found that these temporary rules for nomination and election of officers were reasonable and relevant to the basic purposes of the Consent Order. At no time during the trial of this case did any of the Teamsters, although in the courtroom, take the witness stand to testify that any particular election rule was unworkable or unconstitutional, nor was any evidence adduced that the rules were unworkable or unconstitutional. The court found there was a bad faith refusal of the Teamsters to comply with Order of Recommendation No. 20, and that this refusal resulted in the 1958 local union elections being conducted contrary to the recommendations of the Board of Monitors and without the proper democratic safeguards as guaranteed by Section 3 of the Consent Order. As a result, the Board of Monitors was unable to insure or protect or enforce the rights of the members during the 1958 local union elections. (J.A. 253-255).

That Order of Recommendation No. 20 was relevant to the obligations of the Teamsters and the Monitors under Section 3 of the Consent Order is obvious. The recommended election rules were designed to insure the protection of "the right to vote periodically for elective officers," "the right to honest advertised elections," and "the right to fair and uniform qualifications to stand for office." The election rules could also have been incorporated into the model code of local union by-laws, to be prepared in accordance with the provisions of Section 4 of the Consent Order.

The Teamsters point to only one election rule as being unconstitutional -- No. 3, which would render ineligible for office persons convicted of certain crimes, unless one year has elapsed subsequent to the restoration of their civil rights. The reasoning of the Teamsters seems to be that since Rule 3 would modify eligibility requirements, it is unconstitutional. However, they cite not one section of the Constitution in support of their position. We submit that Rule 3 is in harmony with and effectuates the provision of Article II, Section 2(a) which limits membership to persons of good moral character (J.A. 295), and the provisions of Article XVIII, Section 13(a) which provides for the revocation of membership upon the conviction of a crime or serious wrongdoing which tends to bring dishonor upon the Union (J.A. 309). If a person who has been convicted of one of the designated crimes is ineligible to become a member, and if a member who has been convicted of such a crime is subject to having his membership revoked, surely it would be proper for Local Unions to adopt Rule 3 as a by-law or an election rule. The Teamsters could have directed the adoption of the election rules proposed by the Monitors, including Rule 3, as election rules, in accordance with the provisions of Article XXI, Section 5 of the

International Constitution (J.A. 310-311) or as by-laws in accordance with the provisions of Article VI, Section 4 (J. A. 298) and Article XXI, Section 1, (J. A. 310).

ORDER OF RECOMMENDATION NO. 21

On September 5, 1958, the Board of Monitors recommended that the Teamsters set aside as illegal the merger of trusteed Local No. 595 of Anchorage, Alaska, with trusteed Local Union 183 of Fairbanks, Alaska. (J. A. 255-257, 347-348).[22]

It is the position of the Board of Monitors that the purported merger and resulting dissolution of Local 183 was unlawful because (1) inusfficient notice was given to the membership of Local 183 that there would be a vote on the question of merger at the special membership meeting of September 12, 1957; (2) the question of merger was unfairly presented to the membership and thus the vote was not a truly democratic expression of the membership's views, and (3) it is hornbook law that before trusteed locals can be merged they must first be restored to local autonomy. It is also significant that the Teamster International

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[22] From the testimony in the record the following facts are unrefuted. The locals had been in trusteeship for eight years (J. A. 637, 647). Fairbanks is 400 miles north of Anchorage (J. A. 643). The trustee of both of the locals was Fred Verschuren, Jr., of Seattle, Washington, an absent trustee (J. A. 644), who had appointed Jesse Carr, Secretary-Treasurer of both locals in 1957 (J. A. 645). During its eight years of trusteeship Local 183 has conducted its own monthly meetings; has had its own executive board; and has had its own business agent and assistant business agent (J. A. 667, 668). It has also had its own business office and meeting hall, has engaged in collective bargaining, made contracts in the name of Local 183 (J. A. 668) and has been certified as a collective bargaining agency by the National Labor Relations Board. It has thus performed all the normal functions of a local union. (J. A. 668). At the time of the merger in December, 1957, it had a bank account in excess of $20,000 (J. A. 654).

Constitution does not contain any provisions which authorize compulsory or voluntary merger of local unions.

Acting Secretary-Treasurer Carr testified that without any vote or authorization from Local 183, he had taken it upon himself (J. A. 257, 650) to discuss the merger with Teamster Vice President Brewster in Seattle in November, 1957 (J. A. 257-258, 649-650). Carr had attended about three meetings of Local 183 during 1957. He testified there was discussion of the merger at these meetings, but the minutes of these meetings were not produced (J. A. 648-649). After discussing the proposed merger with Vice President Brewster, Carr sent a letter recommending the merger to General President Beck (Def. Ex. 68). He then instructed Robert Dixon, the business agent of Local 183, whom he had appointed, to call a special meeting on December 12, 1957 (J. A. 258, 651). [23]

The notice given to the membership of Local 183 concerning the December 12, 1957 meeting was clearly defective. [24] The Court below has found that members of Local 183 who were working outside the city of Fairbanks were not given any notice of the special meeting at which the vote on merger was conducted (J. A. 259, 652, 656, 659-660, 674). The Court below has also found that such notice as was given to the membership was inadequate in that it failed to inform the members that a vote would be taken on the question of the proposed merger at the special meeting. (J. A. 258, 653-655, 646, 666, 673). [25]

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[23] Carr admitted that the meeting of December 12 opened with a report concerning the expulsion of 5 members (J. A. 659). These 5 members had opposed the manner of the selection of the delegates to the 1957 Miami Convention and were also opposing the merger. They were later reinstated to membership in accordance with the provisions of Monitors' Orders of Recommendation No. 1 and No. 3. Counsel for the Teamsters admitted that they had been illegally expelled. (J. A. 532, 533, 572).

[24] For a statement of the law on the necessity of notice, see "Board of Monitors Memorandum of Law on Merger of Local Unions." (J. A. 158).

Then, too, the minutes of the special meeting reveal that the question of the proposed merger was unfairly presented to the membership. (Monitors Ex. 65, J. A. 419). It was not considered as a single clear-cut issue but rather as part and parcel of, or as a prerequisite to the restoration of the local from trusteeship to autonomy. In fact the two issues were presented to the membership for a single vote in one motion.

In view of the lack of adequate notice to the membership, and the unfair presentation of the issue of merger to the membership, Order of Recommendation No. 21 was reasonable and necessary. It was relevant to the substantive, affirmative obligations of the Teamsters under Section 3 of the Consent Order to insure and guarantee the protection and enforcement of the individual rights of members and subordinate bodies. There was an obligation upon the International Union to see that the trusteed locals were first returned to autonomy and, if there was to be a vote upon a voluntary merger, that it be conducted under democratic safeguards. Order No. 21 was also relevant to Section 7 of the Consent Order, which requires that trusteed local unions be returned to autonomy in accordance with the best interests of the membership.

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[25] The notice of the meeting that appeared in the Fairbanks Daily News-Miner (Monitors' Ex. 67) was as follows:

> "Notice. Special Meeting, Teamsters Local 183, Thursday, December 12, 1957, 8:30 P. M., Carpenters' Hall, 315 Fifth Avenue. Very important all members attend."

The record reveals that Local 183 placed notices in the Daily News-Miner with respect to all business of the Local that was very important. (J.A. 666).

ORDER OF RECOMMENDATION No. 23

To effectuate the objectives of Section 3 of the Consent Order, the Board of Monitors recommended that the Teamsters uniformly and liberally construe the eligibility provisions of their Constitution to ensure the right to fair and uniform qualifications to stand for office. The eligibility problem is attributable to the provisions of the Constitution requiring that a member must be in continuous good standing for a period of two years prior to the nomination to be eligible for election to office.

Illustrative of the Monitors' position regarding eligibility is Order of Recommendation No. 23 (J. A. 260-261, 356), wherein the Monitors recommended that certain members of Local 377 be declared eligible to run for office. The members had been ruled ineligible for office under restrictive interpretations of the eligibility provisions of the 1952 and 1957 Constitutions, because their employers had failed to remit their checked-off dues on or before the first day of the month. This question of eligibility to run for office is one which has plagued the Board of Monitors. 26/

The importance of the problem of eligibility is apparent when it is realized that the vast majority of all the Teamster membership is on check-off; that is, under the terms of the collective bargaining agreements, their employers agree to remit their dues to the Union.

26/ See also Order of Recommendation No. 11 (J. A. 231, 332, 334) and Order of Recommendation No. 26 (J. A. 524-526).

The 1952 Constitution provides (Article X, Section 5(c)) pertinently:

> "All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Any member failing to pay his dues at such time shall not be in good standing."

It should be noted that there is no specific mention in the above provision of members on check-off.

General President Hoffa and some local unions have construed Article X, Section 5(c) of the 1952 Constitution to mean that, if the employer did not forward the dues of a member to the local on or before the first day of the month, the member was not in good standing and accordingly ineligible for office. 27/ This results in large numbers of the membership being ineligible and incumbent officers having little or no opposition. This unjust and unconscionable interpretation thwarts democratic procedure and affords

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27/ However, the By-laws of Local 100, providing that members on check-off would not be ruled in bad standing if the employer failed to remit the dues after the first of the month, were approved by General President Tobin in 1948 and General President Beck in 1952. (J. A. 522).

a convenient method of suppressing all opposition to entrenched officers.[28]

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[28] This interpretation is even more unconscionable where, as in the case of Local 377, the check-off authorization cards, which were prepared by the Local, provided that the employers were to remit the dues by the 10th of the month. The following is a reproduction of the authorization card signed by one of the members ruled ineligible:

> ASSIGNMENT AND AUTHORIZATION BLANK
>
> International Brotherhood of Teamsters,
> Chauffeurs, Warehousemen and Helpers
>
> CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS
>
> Local Union No. 377
>
> Youngstown, Ohio, Apr. 28, 1955
>
> The undersigned does by way of assignment hereby authorize his employer to deduct his regular monthly dues and initiation fees from his pay, and does further authorize his employer to remit same to Local Union No. 377, by the 10th of every month. This assignment and authorization may be revoked by the undersigned at any time upon the giving by the undersigned to the employer and union a 15 days written notice of the desire to revoke. (Emphasis added)
>
> /s/ William J. Gaw

In addition, Local 377 mailed bills to the employers shortly after the first of the month, reminding them to remit all checked-off dues by the 10th. All of these facts were pointed out to General President Hoffa in Order of Recommendation No. 23 (J. A. 357). The General President would, however, still make the members of This local ineligible under the 1952 Constitution in spite of the above written authorization cards which clearly constitute a waiver of the requirement that all dues reach the local union by the first of the month.

The Board of Monitors has ruled that this restrictive construction is improper and discriminatory, since the employer is the agent of the union for the payment of dues. If the employer does not remit the dues on time under the check-off, the responsibility lies with the union and not the employee-member.[29]

It has been recognized since 1938 that the payment of union dues to a person designated to collect them constitutes payment to the union. O'Connell v. O'Leary, 167 Misc. 324, 3 N.Y.S. 2d 833 (1938). The National Labor Relations Board has likewise recognized this rule. See Ferro Stamping & Mfg. Co. 93 N.L.R.B. 1459, 1508 (1951), holding that, by delivering to the union a written check-off authorization, the employee had fulfilled his obligation to "tender" dues, as required by the union shop contract. In addition, election laws should be liberally construed to favor franchisements instead of disenfranchisements. The Teamster General Counsel agrees with both this general policy and with the legal proposition stated above that an employer collecting checked-off dues is the agent of the union (J. A. 264, 358-359, 518-521) (Tr. 848-849).

The Teamsters assert that a court can determine only whether the union's interpretation of its constitution is reasonable, not whether the court would make a different interpretation, citing, inter alia, 21 A.L.R. 2d 1414 (App. Br. 81). The Court's attention is called to the fact that the following comment also appears in Annot., 21 A.L.R. 2d 1397, 1414 (1952):

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[29] The good standing provision of the Constitution is a matter in controversy, but even the International has agreed that, under the 1952 Constitution, in the case of trusteed local unions, a member is still in good standing despite the failure of his employer to remit his dues on or before the first of the month. (J. A. 458). The Teamsters offer no substantial grounds for making two contradictory interpretations of the same constitutional provisions.

> The inclination of the courts to sustain a union's interpretation of its by-laws and to overlook trifling informalities in its proceedings cannot be extended to put the power of the courts at the mercy of the association.

Thus, it is the position of the Board of Monitors that under the 1952 Constitution, a member was in good standing and accordingly, eligible to run for office, even though his employer did not forward his checked-off dues to the local on or before the first day of the month.

Article X, Section 5(c) of the 1957 Constitution, unlike the 1952 Constitution, contains the following specific provisions on the eligibility of members on check-off:

> Where membership dues are being checked off by the employer pursuant to properly executed check-off authorization, it shall be the obligation of the member to make one (1) payment of one (1) month's dues in advance to insure his good standing. Thereafter he shall remain in good standing for each consecutive month for which the monthly check-off is made. 30/

It was the position of the Board of Monitors that the 1957 amendment to Article X, Section 5(c), requiring the payment of one month's dues in advance by members in check-off, had never been properly promulgated (J. A. 518). For instance, adequate notice of the new requirement had not been given to the members of Local 377; the members had not been individually notified nor had the provisions of the amendment been read at the Local's meetings or posted

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30/ The Teamster General President has adopted a very restrictive and unreasonable interpretation of even the 1957 amendment to Article X, Section 5(c). Although the plain meaning of the amendment is that once a member on check-off has made one (1) payment of one (1) month's dues in advance . . . he shall remain in good standing for each consecutive month for which the monthly check-off is made, "regardless of whether the employer remits the dues to the Union, it is the position of the General President that "this payment of one month's dues in advance does not necessarily protect any employee if his employer is more than one month delinquent." (J. A. 517).

on bulletin boards (J. A. 264). Nor can the brief notice, captioned "Members Take Notice," (J.A. 511-512) which appeared in the March issue of The International Teamster, reasonably be considered proper notice (J. A. 356). Instead of providing for a prospective date of application, the notice stated that the amendment was "now in effect." (J. A. 517) Thus, the amendment itself was inherently defective, for when it went into effect on January 31, 1958, the date of the Consent Order, the members in check-off were immediately rendered in bad standing, since they had no notice of the requirement of making the one month's payment in advance nor the opportunity to do so. The Monitors were of the view that the lack of proper promulgation and notice of the effective date of the 1957 amendment to the Constitution was a denial of due process and that the amendment should have been given prospective application only after the membership had been given a reasonable opportunity to comply.

In the lower Court, when the defendants were confronted with the inherent due process defect of their putting the 1957 amendment to Article X, Section 5(c) into effect without adequate notice, the Teamster General Counsel ingenuously attempted to argue that it was not put into effect until April 1. On this particular point the General Counsel stated:

> Mr. Williams: "Would you please read it in because the whole thrust of this was the new Constitution which your Honor put into effect by the Consent Decree of January 1, should be construed liberally to merit good standing and it would not be effective until April 1, until there had been dissemination to the whole membership through the Teamsters." (J. A. 517).

The General Counsel admitted by this statement that the International Union had intended that there should be dissemination and notice to the membership before the 1957 Constitution should be put into effect and that there was to be dissemination among the membership and the amendment was to go into effect by April 1, 1958. However, no proof was introduced that the membership was notified that it was to go into effect on April 1. Actually the record shows that in the March issue of The International Teamster, a notice stated that "the new constitution at the Miami Convention in September 1957 and now in effect, provides in part as follows:" and then there was inserted Section 5(c) of Article X. (J. A. 516). Thus the Teamsters, themselves, in the lower Court implicitly admitted that there was an inherent defect in the lack of dissemination and promulgation among the membership of the 1957 amendment. [31]

It is submitted by the Board of Monitors that the District Court was correct in holding that, under the 1952 Constitution, a member was in good standing despite his employer's delinquency in remitting checked-off dues (J. A. 277); that the 1957 amendment imposed an initial restriction and did not relax a prior one; and that since this restrictive amendment was not properly promulgated, (J. A. 277-278) paragraphs 6 and 7 of the Order appealed from in no way cause appellants to violate the Union Constitution and should be sustained.

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[31] With respect to the December 5, 1958 order entered by the Federal District Court for the Northern District of Ohio concerning the subject matter of Order of Recommendation No. 23, it should be noted that the Court stayed its order pending appeal to the Sixth Circuit Court of Appeals. See Amended Decree, U. S. District Court for the Northern District of Ohio, Eastern Division, December 24, 1958, Paragraph 1, James C. Connell, Judge.

III. THE DISTRICT COURT'S ORDER NOT ONLY TO THE EXTENT IT MODIFIED SECTION 8 OF THE CONSENT ORDER TO PROVIDE THE TIME FOR HOLDING A CONVENTION SHALL BE SUBJECT TO FINAL APPROVAL OF THE COURT, BUT ALSO THE ORDER IN ITS ENTIRETY, IS A VALID MODIFICATION OF THE ORIGINAL CONSENT ORDER.

A. The District Court had the Power to Modify the Consent Decree.

As has been demonstrated in Section I, supra, the order of February 9, 1959 may be sustained as a valid and fully warranted construction of the Consent Order as to all elements of the order except to the extent the District Court modified Section 8 to provide the time for calling a convention shall be subject to final approval of the Court. Not only was the modification of Section 8 a valid modification of the original Consent Order but even if this Court had been willing to accept the theory of construction, the District Court's order can and should be sustained on the theory that it constituted in its entirety (not merely as to Section 8) a valid modification of the Consent Order.

The entire order can be sustained as a valid modification because the appellants must concede that the original order was intended to serve as a means of correcting certain existing abuses of the Teamsters prior to the holding of a convention. Even assuming arguendo the parties contemplated that the method to effectuate this basic purpose was for the Board of Monitors to act solely in an advisory role with reliance placed not so much on specific obligations of appellants but on an overall good faith effort of the appellants to effectuate the Order, the least that can be said is that under the Consent Order the appellants could not arbitrarily deal with the Board of Monitors and were required to make some efforts to take corrective action under this Consent Order. Having found that the Teamsters arbitrarily disregarded the Board of Monitors and attempted to thwart the basic purposes of the Consent Order, the Court has the inherent equity power to prevent this decree from becoming an instrument of fraud. The Court had the power in these circumstances to modify not only Section 8 but also the method of effectuating the basic purposes and to provide that thereafter the Teamsters were required to assume affirmative, substantive obligations to take corrective action when needed.

Appellants concede that an equity court has the inherent power to modify its own consent order. United States v. Swift & Co., 286 U.S. 106 (1932). Contrary to appellants' assertions, however, the instant modification is a proper one, under the tests set forth by Mr. Justice Cardozo in the Swift case.

Under the distinction laid down at p. 114 of the Swift case, supra, (App. Br., p. 37), the Consent Order entered below clearly involves "the supervision of changing conduct or conditions" and is therefore "provisional and tentative" in its operation and properly modifiable. Under Section 1 of the Consent Order, the recently elected officers were to take office "provisionally in accordance with the following paragraphs of this decree." (Emphasis added now and hereinafter unless otherwise stated.) It is specifically stated in Section 2 of that Order that the Monitors "are subject as officers of the Court to supervision and direction of the Court in performing these duties as hereinafter enumerated." (J.A. 58). Further, the Sections relating to the powers of the Monitors and the duties of the Executive Board are entirely prospective in nature. Moreover, as has been pointed out in Section I above, the substantive obligations imposed by the decree are all prospective in nature requiring future corrective action. The conclusion is inescapable, then, that this

Consent Order was modifiable under the requirements of the Swift case.

Appellants contend that this Order was based upon rights which were "fully accrued" and upon facts which were "permanent" and "impervious to change," in the language of Swift. It is further contended that the Order held the 1957 elections to be valid (App. Br., p. 38). In fact, the Consent Order did no such thing; nor was it based upon a "completed act or set of acts" (App. Br., p. 39) which might put it beyond the Court's power to modify. The issue of the validity of the 1957 elections was never resolved by the Consent Order, any more than the central issue of negligence is decided by a court-approved settlement by the parties in a negligence action. Indeed, counsel for appellants recognizes in another context the correct rule which refutes the argument he advances here concerning the validity of these elections, and cites authorities for the rule that a compromise is not even impliedly an admission of the validity of an adversary's claim (App. Br., p. 34). How, then, did the instant Consent Order in any way determine the validity of the 1957 elections? The answer is that it did not and could not! Further, the acts of wrongdoing on the part of Local and International Union officials set forth in the Amended Complaint in Civil Action 2361-57 (J.A. 1), have continued since the entry of the Consent Order and still continue to this day, thus negating appellants' contention that the Consent Order was based on a completed act or set of acts. Consequently, this position of appellants and their attempted application of the Swift rule is inconsistent with the facts and cannot be sustained.

The inherent power of a court to modify its own injunction exists irrespective of whether it involves an antitrust case. The crucial factor is whether the modification is based upon changed circumstances (discussed, infra), and not upon the exact classification of the litigation. Surely, the anti-trust field has no monopoly on conditions which are subject to change. The question of changed circumstances or conditions is always one to be decided by the Court which is asked to modify its earlier order.

There is no merit in appellants' argument (App. Br., 39-40) that a supplemental injunction must specify or narrow the original one, rather than amplify it. The contrary rule was recognized by the United States Supreme Court in Hughes v. United States, 342 U.S. 353 (1952), which involved a modification of a consent decree far more drastic than that granted here. In that case, plaintiff was given an option under a consent decree to "either" sell certain stock held by him "or" place it with a trustee. After entry of the decree, the Government asked the District Court to modify that order and compel the plaintiff to sell the stock, thus destroying completely the option given him under the consent decree. The District Judge granted the modification, but without holding any hearings or taking any evidence. Because there was no hearing, the Supreme Court reversed, but stated:

> "We entertain no doubt concerning the District Court's power to require sale of Hughes' stock after a proper hearing. But there has been no such hearing of this issue as to Hughes." 342 U.S. at 357-58.

Thus the Court made it abundantly clear that, had such hearings been held, this drastic modification would have been sustained. As has been pointed out, the modification in the instant case is far less sweeping in its effect than that held permissible in the Hughes case. The question of hearings and evidence is discussed in subsection B-3, infra.

Appellants contend (App. Br., 41) that the Court below had no jurisdiction to decide the issue of their non-compliance with the Monitors' recommendations, as that issue was not before the Court at the time of the original action. This ignores the retention of jurisdiction by the Court for the supervision of a decree that is a continuing injunction and necessarily pertains to events occurring subsequent to, but which arise out of, the original decree. Furthermore, it ignores the basic fact that the Consent Order imposed prospective affirmative obligations on the appellants to take corrective action in certain areas of union activity. And, although the issue of compliance was not originally before the Court, the issues of corruption within the Union and a remedy for that evil were before it. Under the terms of the decree, the remedy afforded was the Monitorship as a guide to the action of the Union. Therefore, insofar as failure to comply in good faith with the reasonable and relevant recommendations of the Monitors affected that remedy, the entire, continuing, transaction had its basis in the central issue before the Court at the time of the original suit; namely, the evils of corruption and a lack of democratic procedures within the Union.

It is further contended that if this modification is upheld, the Consent Order will amount to an "abject surrender" rather than a "compromise" of the issue before the Court in the original action, as greater relief will thereby be granted than was sought in the amended complaint (App. Br., pp. 31-32, 42). This assertion is demonstrably false. Prayer No. 2 of the amended complaint, p. 27 (J.A. 27), which asks for the appointment of a receiver or receivers or master in equity or masters in equity, clearly shows that the plaintiffs in that action desired such person or persons to supervise the conduct of the International Union and its subordinate bodies until such time as free and democratically-run elections could be held. When one reads this Prayer in connection with the scores of allegations set forth in the complaint, many of which recited unlawful violations of the IBT and AFL-CIO constitutions and the AFL-CIO Codes of Ethical Practices entirely distinct from the narrow question of free and honest elections and the desire of present officers to perpetuate themselves in power, it becomes obvious that the plaintiffs felt that, although such supervision was directed to the lawful application of these constitutions to elections at the national and local level, free and representative elections could not possibly be held until the listed abuses were corrected and generally democratic procedures assured for all Teamster members. Even a cursory understanding of present-day union practices dictates that this specific prayer be read in the light of these many and varied allegations.[32]

In addition to a consideration of the abuses complained of and the relief sought, one may always sue for peace on whatever terms he chooses; it well may be that the provisional officers felt they could take office only by accepting the Monitors as a condition to such action. This compromise also spared the appellants any further expenses of litigation and the possibility of an adverse judgment granting all the demands of the plaintiffs; demands far greater than the relief afforded by the modification. Most importantly it permitted Mr. Hoffa, et al., to take office immediately. In return therefor, appellants agreed to take positive steps to ensure a clean election and to otherwise eliminate the corrupt practices then prevailing within the Union. Appellants now have what they bargained for and yet have withheld, in bad faith, what they offered in the bargain. This modification is, then, no "abject surrender," and is clearly within the permissible limits of the District Court to modify its earlier Consent Order.

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[32] That this is the actual effect of this prayer for relief is evident from paragraph 65 of the complaint (J.A. 23), where plaintiffs give as the reason for the necessity of election supervision to ensure the honest conduct of a constitutionally-held election the fact that:

> "the International Organization, as victimized by defendants and those in concert with them, is bankrupt of its true wealth, which is responsible stewardship; and must, in accordance with the exigencies of justice and equity and of the IBT Constitution, be put into receivership until responsible stewardship respecting the IBT and AFL-CIO Constitutions can be restored to its members whose democratic rights defendants obstruct and deny."

Also note the specific charges of corruption, conflict of interest on the part of Union officers, misuse of Union funds for the personal gain and benefit of officers, abuses in trial procedures and the processing of charges, etc., set out in paragraph 43; alleged violations of virtually every Article of the IBT Constitution, set out in paragraph 44; and the general statements concerning the effects of these violations, set out in paragraphs 69 and 70 (J.A. 6-16, 24, 25).

For all of the reasons discussed above, the District Court clearly had the power to modify this Consent Decree.

B. The Instant Modification is a Valid Exercise of the Power to Modify.

1. The Modification was Properly Based Upon New and Unforeseen Conditions Calling for a Change.

The modifications by the Court below are necessary because of changed conditions, are reasonably calculated to effectuate the basic purposes of the Consent Decree, and are therefore valid. Contrary to appellants' contention, (App. Br., 44-46), the "grievous wrong evoked by new and unforeseen conditions"[33] was the failure of the Union officers, in bad faith, to comply with the Order itself and to take the needed corrective action set forth in the valid recommendations of the Monitors or even to turn to the Court below to question the suggested corrective action. Non-compliance with some of the Monitors' recommendations may well have been foreseeable, but certainly not "bad faith" non-compliance (Findings of Fact 5-6, J.A. 208-210). Indeed, it would be a fraud upon the Court below to suggest that the parties, with the approval of that Court, anticipated bad faith refusals to comply with reasonable and relevant recommendations of the Monitors which were merely to insure that the appellants carried out the substantive obligations imposed on them by the terms of the Consent Order.

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[33] United States v. Swift & Co., 286 U.S. 106, 119 (1932).

Consequently, the conduct of appellants after the entry of the Consent Order in refusing in bad faith to comply with these recommendations constituted sufficient changed conditions to warrant modification of that Order. In _School of Speedwriting_ v. _Feener Business Schools_, 139 F. Supp. 110 (D. Mass.), _aff'd_, 234 F. 2d 1 (1st Cir.), _cert. denied_, 352 U.S. 942 (1956), Judge Wyzanski granted plaintiffs' motion for modification of an injunctive decree on the basis of conduct of defendants which he found to be a bad faith attempt to circumvent the purposes and spirit of the decree, _even though the literal terms of the order had been followed_. This finding by the Court below of bad faith on the part of appellants here also serves to distinguish the case of _United States_ v. _Radio Corp. of America_, 46 F. Supp. 654 (D. Del. 1942), _appeal dismissed_, 318 U.S. 796 (1943), cited at p. 43 of appellants' brief.

Further, this Court will be justified in holding that the changed circumstances found by the District Court have turned the Consent Order into an "instrument of wrong." Evils which were thought to be alleviated by the Consent Order have become more substantial than ever in that the appellants were freed from the danger of the granting of the relief sought by the original plaintiffs (having entered into the Consent Order), and yet held themselves not bound by the recommendations of the Monitors nor bound to comply with the numerous obligations imposed on them by the Consent Order. This situation aggravates the affairs complained of, rather than remedying them. In Webster Motor Car Co. v. Zell Motor Car Co., 234 F. 2d 616, 619-20, (4th Cir. 1956), the Circuit Court reversed the refusal of a district court to modify its own injunction, stating that the district court had

> plenary power over its own interlocutory orders, and when it appears that any such unintended and unconscionable use is being made of an order that it has entered as appears here, it should not hesitate to set the order aside.

These last two cases conclusively demonstrate that bad faith non-compliance with a court decree constitutes sufficient changed conditions to warrant modification of that decree. Since this describes exactly the situation in the instant case, as found by the District Judge, this principle should govern here. Appellants correctly cite Coca Cola Co. v. Standard Bottling Co., 138 F. 2d 788 (10th Cir. 1943), p. 44 of their brief, as one example of a valid modification. When they state, however, that the contrast between that case and this is "too clear to require discussion," the implication is that, since the two fact situations differ, the same rules cannot apply to both and modification would not be justified in both. Such an implication is as incredible as their earlier inference that conditions and circumstances change sufficiently to warrant modification only in the anti-trust area. (App. Br., 39). Appellants, too, cite the Webster Motor Car case, (App. Br., 45) as supporting their position. Upon a closer examination, however, it will be seen that the case actually supports the position of appellees, as outlined just above.

2. The Modification Effectuates the Basic Purpose of the Consent Decree.

Under the tests laid down in Chrysler Corp. v. United States, 316 U.S. 556 (1942), the Order of February 9, 1959 clearly effectuates the basic purposes of the Consent Decree. Although appellants conclude that this order will thwart, rather than effectuate, such purposes (essentially, a free and honest election guaranteed by democratic procedures within the Union), their conclusion is without merit, as it is based upon an erroneous interpretation of the basic purposes of the Consent Decree. Appellants apparently claim that the modification serves to postpone indefinitely the coming election and that it was the purpose of the Consent Decree that, until a new convention could be held, "the control of all Union affairs, including elections, not be given over to outsiders, but remain in the hands of the officers elected in 1957 and 'provisionally' installed in office . . ." (App. Br., 47; emphasis is theirs).

The truth of the matter is that this was not at all the basic purpose of the Consent Order. First, the District Court retains the power, in its discretion, to set a new election date. In addition, the holding of any kind of an election, however subject to improprieties, clearly was not the purpose of either the Consent Order or of the original complaint filed in Civil Action 2361-57. The complaint, the Consent Order and the subsequent modifications are designed to ensure an honest election, in accordance with the IBT Constitution. The Consent Order prohibited the holding of an election until the passage of one year, thus providing what was then thought to be adequate time in which conditions could be created that would ensure a fair election. The modification as to the date of the election merely recognizes that, because of the bad faith of appellants, more time will be necessary and additional means are required to achieve that aim. The significance of the Consent Order is not found in the recital that a new convention will be held, but in the creation of the means intended to ensure a fair and honest election. That this is the actual basic purpose of the Consent Order is made quite clear from Judge Letts' Memorandum Opinion of December 11, 1958, at pp. 2-3, 3-4 and 6 (J.A. 165-69), and from a careful reading of paragraphs 3 and 7 of the Consent Order itself. Indeed, paragraph 3 specifically states that the purpose of Monitor recommendations is "to insure the enforcement and protection of all rights of the individual members and the subordinate bodies of the International Brotherhood . . ." (J.A. 59)

That the purposes and objects for which a decree is entered may be used as a basis for modification and that violations of the spirit of such a decree likewise afford a valid basis for modification are further made clear in John B. Stetson Co. v. Stephen L. Stetson Co., 128 F. 2d 981, 983 (2d Cir. 1942), where the Court stated that:

> "In deciding whether an injunction has been violated it is proper to observe the objects for which the relief was granted and to find a breach of the decree in a violation of the spirit of the injunction, even though its strict letter may not have been disregarded."

In this regard, note again the School of Speedwriting case, p. 84, *supra*.

Under this correct view of the basic purposes of the Consent Order, it is evident that these modifications were essential to prevent those purposes from being effectively frustrated by appellants. These basic purposes were, in fact, effectuated by the modifications and, therefore, it cannot be said that the District Court abused its discretion in its Order of February 9, 1959.

Appellants' contention (App. Br., 47) that a permissible modification must bear a close relation to the "specific design" of the original decree may be effectively disposed of in the alternative. In the first place, our discussion of the Hughes case,[34/] Section II-A, supra (p. 78) shows that this statement is not at all an accurate statement of the law. Secondly, as has been demonstrated just above, the instant modification did bear such a close relation to the specific design and basic purposes of the Consent Order and must be sustained even if appellants' statement above were correct.

Appellants next devote great attention to the meaning of the word "provisional". We have no quarrel that the usual, general, meaning of the word refers to a temporary or tentative status. No word can be construed in a vacuum, however, and, when viewed in the overall context of the Consent Decree in which it is used, it becomes apparent that the officers elected at the 1957 Convention were to take office and the constitution adopted there to go into effect only because the Union was to attempt, with the aid of the Monitors, to effectuate the purposes of the Decree, as outlined in the sections that followed. "The specific provisions of the consent decree must be read in the light of its general purposes." Standard Oil v. Clark, 163 F. 2d 917, 931 (2d Cir. 1947). That the effectiveness given by the Decree to the officers and Constitution was specifically tied in with, and made a condition of, the later

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[34/] Hughes v. United States, 342 U.S. 353 (1952).

sections of the Decree is made clear from the specific language of Section 1, stating that the Constitution was to take effect and the officers to assume office "provisionally in accordance with the following paragraphs of this decree." (Emphasis added, J.A. 58). The correct emphasis of this phrase is not, as appellants contend, on the one word "provisionally", but on the fact that these events were permitted by the Court to take place only insofar as the specific provisions of the rest of the Decree were fulfilled through the joint efforts of the Union and the Monitors.

Therefore, even if this Court decides that the meaning of the word "provisional" is of any importance concerning the validity of the District Court's action when viewed as a modification, its meaning, when viewed in this proper context, clearly implies its conditional nature. It is perfectly true, as appellants point out (App. Br., 50) that, in the event of their violation of the Consent Order, there is no provision for a reinstatement of the status quo ante. And, in fact, none has been granted. These officers still hold their offices and enjoy complete freedom in most aspects of the operation of the Union. Only in the few, limited, areas set out in the Consent Order and modification thereof must they comply with the recommendations of the Monitors found reasonable and relevant by the Court below.

Finally, all of the arguments advanced by appellants in shotgun fashion (App. Br., 50-51) have been fully discussed and disposed of in the preceding sections of our brief. To these arguments is added an excerpt from an article by Professor Chafee to the effect that court supervision over the internal affairs of a voluntary association is undesirable. This excerpt is, however, quoted out of context. In fact, the above statement is merely one of four possible alternative theories or policies available to a judge when deciding whether or not to exercise jurisdiction over such associations. And, sitting as a court of equity, the judge will quite properly give great weight to the factor of public interest. Even in 1930, Professor Chafee recognized that unions may be a specific example where judicial intervention is warranted, because of the "public concern" with their internal operation. 43 Harv. L. Rev. 993, 1023. Considering these details, omitted by appellants, the article can hardly be said to lend support to their position. In addition, labor unions are universally recognized today as being affected with a public interest sufficient to subject them to both judicial and legislative control, a condition that may not have existed in 1930.

It is submitted that the District Court's modification of the Consent Order properly served to effectuate the basic purposes of that Order and must therefore be sustained by this Court on appeal.

3. The Modification in No Way Violates Appellants' Rights to Due Process of Law.

Appellants raise as an alleged issue of Due Process the question of whether the modification rested on a justifiable factual basis, using as a portion of this argument a rather quaint metaphoric reference to the home team in a baseball game being unable to get its "turn at bat." (App. Br., 52-53). The basis of this contention is that only the plaintiffs in the original action, after 22 days of trial, had an opportunity to present evidence, and that the cause was compromised before appellants could introduce any evidence refuting that of plaintiffs.

Therefore, it is argued, plaintiffs' evidence introduced at that time could not be considered by the Court below when it considered the motion to modify the Consent Decree.

This argument, if it stood alone, with no facts present, could not successfully be contested by appellees. Several cases have reversed a lower court's modification on the basis that no hearing was held and no evidence taken to support a change in the original order. The Hughes case has already been discussed, wherein it was noted that "no hearing" had been held. In United States Gypsum Co. v. National Gypsum Co., 352 U.S. 457 (1957), a portion of the modification entered by the lower court was reversed on the ground that the record was "completely bare" and no evidence had been taken on the issue considered by the lower court in entering that part of the modification. See also Liquid Carbonic Corp. v. United States, 350 U.S. 869 (1955).

In fact, however, other elements were present in the instant case which serve to distinguish this situation from those in the above-cited cases and to uphold the validity of the modification entered below. Appellants fail to mention that the District Court held six days of additional hearings at the time of the petition for modification, after adequate notice was given to all parties that the hearings were to be held as part of the modification proceeding, at which time both sides were heard by the Court and submitted evidence. Also, after the submission of proposed findings of fact and conclusions of law prior to the order of modification, appellants were given the opportunity to and did submit written objections thereto, which were carefully considered by the Court before entering its order of February 9, 1959. Therefore, unlike the Hughes case and those following it, which struck down a modification because "no" evidence had been taken, or because "no" hearings had been held, or because the record was "completely bare" of supporting evidence, the requirements therein laid down, that adequate hearings with an opportunity to present one's position must be held in order to sustain a modification of an earlier order, have been fully met in the case at bar.

Appellants further note, apparently as an impropriety, that proposed findings of fact and conclusions of law were drawn up by Chairman O'Donoghue and were adopted by the District Court without a single change. It has already been pointed out that appellants submitted their objections to these proposed findings and conclusions, which were carefully considered by the Court below before entering its order. In addition, several cases have demonstrated clearly that counsel may draft final orders at the request of a court and that their statements may even be adopted by a court in construing the effect of an earlier decree. Judge Wyzanski, in the Speedwriting case, supra, decided to "grant the plaintiff's motion for modification of the final decree in exactly the form in which the motion is presented . . . ." 139 F. Supp. at 110.

The Court there further stated, at p. 113, in assessing damages and other relief: "Decrees appropriate to this end may be drafted by the plaintiff." See also Bigelow v. Twentieth Century-Fox Film Corp., 183 F. 2d 60 (7th Cir. 1950). There is, therefore, no merit whatsoever in this argument of appellants.

The above completely disposes of appellants' contention that they were denied Due Process of Law by means of a modification of the Consent Order without having any chance to be heard. Counsel for appellants seems to have confused the alleged deprivation of appellants' "turn at bat" with their inability to score.

4. This Court May Review the Order of Modification Only to Determine if the District Court Abused Its Discretionary Power to Modify.

This Court is limited in its review of the validity of the modification to an examination of whether the District Court was guilty of an abuse of discretion in exercising its inherent power to modify its earlier Consent Order. In Grand Union Equipment Co. v. Lippner, 167 F. 2d 958, 959 (2d Cir. 1948), the court stated that:

> "Assuming existence of the power (to modify the earlier decree) we should review only its discretionary exercise for abuse of discretion."

The same rule was pronounced in the Webster Motor Car case, supra, where Chief Judge Parker, speaking for the court, stated that:

> The setting aside of modification of interlocutory orders is, of course, a matter resting in the sound discretion of the trial judge; but, upon the facts as found by him here, we would think that any other course than the setting aside of the order would not properly protect the orderly administration of justice and hence would not be a sound exercise of discretion. 234 F. 2d at 619-20.

In the case at bar, as in Webster, only by modifying its earlier order could the District Court "properly protect the orderly administration of justice", and, since modification was granted below, the Court should hold that there has been no abuse of discretion.

The breadth of this discretion is pointed out in United States v. Aluminum Corp. of America, 153 F. Supp. 132, 164 (S.D.N.Y. 1957):

> It suffices to state that in each case the retained jurisdiction of the Court is always defined by the terms of the judgment and the nature of the relief sought.

In addition, it is well established that a court of equity has extremely broad and flexible power to mold its relief to the necessities of each case before it. Brown v.

Board of Education, 349 U.S. 294, 300 (1955); United States v. National Lead Co., 332 U.S. 319, 334-35 (1947). This is particularly true, where, as here, the public interest is vitally affected (by virtue of the gigantic size of the Union, operating principally in transportation industries where an improper stewardship by high officials offers unique opportunities to strangle the nation's economy). See, for example, the Court's opinion in Virginian Ry. v. Federation, 300 U.S. 515, 552 (1937):

> Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.

In this last regard, it is significant that, not only is the public interest affected as outlined above, but the Monitors were appointed by the Court below to act as officers of the Court and, as such, they have a duty to protect the public interest.

Unless, therefore, this Court finds that the action of the Court below in modifying its earlier Consent Order was so grossly improper as to constitute an abuse of its broad discretionary power, that modification should not now be disturbed. And, as has been shown in some detail above, all of the various tests of a valid modification imposed by the cases cited have been met in the case at bar. Regardless of this Court's view of the Order of February 9, 1959, as a construction of the Consent Order (except concerning the change of the election date), that Order must be sustained on the basis of a valid modification of the Consent Order, and this Court should so rule.

CONCLUSION

As appears from the foregoing, the Order appealed from properly construed and modified the Consent Order and is supported by substantial evidence. Accordingly, it is respectfully submitted that the Order of the District Court should be affirmed.

/s/ Martin F. O'Donoghue
Martin F. O'Donoghue,
Chairman, Board of Monitors.

In The

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED APR 14 1959

Joseph W. Stewart
CLERK

Number 14, 983

JOHN F. ENGLISH, et al; Appellants

v.

JOHN CUNNINGHAM, et al; Appellees

BRIEF FOR APPELLEES, COMPRISING ALL PLAINTIFFS BELOW, EXCEPT JOHN CUNNINGHAM

ON APPEAL FROM AN ORDER OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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New York, New York

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Washington, D. C.

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QUESTIONS PRESENTED

1. Whether the Monitors under the Consent Order have the right to seek enforcement of significant reasonable recommendations relevant to the purposes of said Consent Order in situations where Appellants arbitrarily or erroneously refuse to comply with such recommendations.

2. Whether the recommendations of the Monitors may be designed to eliminate by due process procedures, criminal or corrupt officers from the Union.

3. Whether the Court below has properly construed the Consent Order by its Memorandum Opinion.

4. Whether the Court below properly dismissed Appellants' Motion to remove Monitor Schmidt.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIEF FOR APPELLEES, COMPRISING ALL PLAINTIFFS
BELOW, EXCEPT JOHN CUNNINGHAM

OPINION BELOW

The unreported opinion of the Court below, dated December 11, 1958, is reproduced beginning at page 164 of the Joint Appendix (hereinafter referred to as "JA").

JURISDICTIONAL STATEMENT

The complaint in the District Court predicated jurisdiction upon the Act of June 25, 1948, Chapter c., 646, 62 Stat. 930, 28 USC, Section 1332; Act of June 23, 1947, Chapter c., 120, Title III, Section 301 (c) - (e), 29 USC, Section 185 (c) - (e); and Rule 17(b), Federal Rules of Civil Procedure (hereinafter referred to as F. R. C. P.). The action below was begun September 19, 1957. Trial began December 2, 1957. After plaintiffs had rested, further trial was obviated by the Consent Order signed and filed herein, January 31, 1958 (JA 58). The appeal is from the order of the District Court dated February 9, 1959 (JA 281) based upon the Memorandum Opinion rendered December 11, 1958 (JA 164) and Findings of Fact and Conclusions of Law signed and filed herein February 9, 1959 (JA 206).

STATEMENT OF CASE

The plaintiffs named in the complaint herein were 13 members of various locals affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "Union"). The action - a class action - was brought on behalf of the thirteen and of all members similarly situated. The complaint alleged a long series of misfeasances perpetrated, encouraged or tolerated by defendants in violation of the Union's constitution, of applicable State and Federal Laws, of sound trade union practice and of decent moral standards. Among these acts of commission and omission were (a) embezzlement, and other misuse of union funds, (b) widespread and systematic violation of the democratic rights of workers, (c) rigging elections of the Union and of its subordinate bodies, (d) use of trusteeships as an instrument for perpetuation in power of unworthy officers, (e) intra-union dictatorship and tyranny, (f) infiltration of Union by gangsters and racketeers, (g) conspiracy by David Beck, former General President and James R. Hoffa, provisional General President, to rig the election of officers at the Seventeenth Convention of the Union held in Miami Beach, Florida, in October, 1957, (h) their conspiracy to dominate said convention in order to effectuate election of James R. Hoffa as general president and to arrange for the presidency emeritus of Dave Beck, (i) suppression of free speech and free assembly within the Union, (j) resort to violence, threats and intimidation, (k) other intolerance of dissent, and (l) in general the use of Union facilities and funds as if they were for the aggrandizement of the defendants in power, influence and wealth.

Upon the basis of lengthy arguments and voluminous affidavits and briefs, the court below on September 29, 1959 granted a preliminary injunction supported by Findings of Fact and Conclusions of Law. That injunction prohibited the holding of an election at the seventeenth convention of the Union (JA 31). This Court on September 28, 1957 provisionally stayed the effectiveness of that injunction (JA 34). Appellees here petitioned Chief Justice of the United States, sitting as Circuit Justice, to vacate that stay. Such petition was denied, also provisionally (JA 33). The proviso involved clearly based the stay upon the requirement that the new convention was to be conducted in conformity with the Union's constitution. (JA 33, 34) The 1957 convention, as a result of these stays, continued. New officers were "elected." A new constitution was "adopted." The entire proceeding was rigged. The delegates to the convention had been hand picked by Hoffa and Beck and those in concert with them, all in utter violation of the Union constitution. (Findings of Fact and Conclusions of Law dated October 23, 1957; JA 97-98; Hearings, before the Select Committee on Improper Activities in the Labor or Management Field, 85th Congress, 2nd Session, pursuant to Senate resolution 74 and 221, 85th Congress, Part 40, September 17, 1958, pages 15120-15131; said hearings are hereinafter referred to as "Senate Select Committee Hearings" ; Proceedings, 17th Convention, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Miami Beach, Florida, beginning September 30, 1957, which became an exhibit in the documentation submitted to the Court below upon argument for the second preliminary injunction dated October 23, 1957 and duly filed herein).

Because the Seventeenth Convention had been conducted in flagrant disregard of the Union's constitution, plaintiffs below amended their complaint and sought to void the convention and its elections (JA 35). Plaintiffs below also applied for a preliminary injunction to prevent implementation of the decisions and elections at the 17th Convention. In the course of the ensuing hearings below, plaintiffs produced the testimony of an investigator for the Senate's Select Committee through whom the minutes of the Credentials Committee of the 17th Convention were placed in the record as an exhibit. The court below on October 23rd, 1957, issued its second preliminary injunction prohibiting defendants from assuming office pursuant to the rigged election; and forbidding other acts (JA 51). When this matter came on before this court on November 4, 1957, in No. 14201, attorney for the plaintiffs consented to certain slight modifications of the preliminary injunction of October 23, 1957 (JA 54).

The trial began on December 2, 1957. In the course of the trial, attorney for defendants, Edward Bennett Williams, shortly prior to the Christmas recess, instituted abortive conversations looking toward a "shortening of the trial." At that time he made his first proposal of a consent order to obviate need of further proof. The attorneys for the parties could not, however, reach agreement. After 22 days of trial, and after plaintiffs had rested their case, Mr. Williams again suggested negotiations for the purpose of obviating necessity of further trial. These negotiations resulted eventually in the Consent Order signed and filed herein on January 31, 1958 (JA 58; JA 72-73, 76, 78-79, 80-82; 97-98, 99-100; 116 - Paragraph III; 424, 426-428, 434; 473-475; Initial Report of Board of Monitors to Judge Letts, Defendants' Exhibit 20, pages 168-173, especially Section B, entitled "Powers of Monitors"). Insofar as the record contains other facts relevant to this appeal, counsel for plaintiffs (except Cunningham) hereby adopts, as his own, the statement of facts contained in the Monitor's brief.

ARGUMENT

POINT I

THE BRIEF FOR APPELLANTS IN ITS MAJOR ARGUMENTS, FILLING MANY PAGES OF ITS PRESENTATION, IS PATENTLY ADDRESSED TO A FALSE ISSUE. Some 37 pages of the Brief for Appellants are wholly or partially given over to an attack upon a straw man. Mr. Edward Bennett Williams devotes his Brief to an elaborate attempt at showing that the Court below had no power to read the Consent Order as clothing the Monitors with other than "advisory" or "recommendatory" power. This thesis (never propounded by Appellees or the Court below) recurs constantly throughout his Brief. It is repeated so often and so emphatically as to indicate that Appellants place major reliance upon it. (Brief for Appellants p. i, Questions numbered 1 and 3; & pp. 12, 17, 18, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 36, 38, 42, 47, 48, 50, 51, 52, 55, 56, 57, 58, 59, 61, 62, 63, 70, 71, 85, and 86.) It will be useful to examine the precise language by which in a number of salient instances, the Brief for Appellants states this false issue:

(1) ... may the District Court ... modify the decree to confer upon the Monitors mandatory rather than advisory powers ...? (Pages 1 - 11)

(2) "These petitions (the Monitors' and Mr. Schmidt's) sought to establish for the Monitors ... mandatory power over a Union's General Executive Board ... " (Page 12)

(3) "On December 11, 1958, Judge Letts issued his Memorandum Opinion holding that the Monitors possessed mandatory powers ..." (Page 12)

(4) "The Clear language of the consent decree confers upon the Board of the Monitors, for the most part, purely advisory or recommendatory functions ... it cannot fairly be construed to give the Monitors command powers or authority ... (Page 17)

(5) "... the Board of Monitors was to have authority only to counsel and recommend, but not to command. ..." (Page 23)

(6) " ... clearly ... the consent order limits the Monitors to purely recommendatory functions ..." (Page 26)

(7) " ... there is nothing in the record to show that they intended the Monitors to have mandatory powers or authority to engage in a 'general housecleaning'" (Page 31)

(8) "... can there now be a modification to the effect that the Monitors may impose their will upon the Union officers ...?" (Page 47)

(9) "A purported modification of this consent decree resting on a theory that the Monitors have mandatory powers to remold the Union closer to their hearts' desire and that, until they have had their every wish gratified, the General Executive Board may not call a convention is flagrantly inconsistent with the original decree." (Page 50)

(10) "It (such a theory) removes from the members of the Union the control of their own affairs and places it in the hands of outsiders with virtually dictatorial powers..." (Pages 50, 51)

(11) "The result of such delegation is that the Monitors rather than the Court, exercise judgment and order action and that the appellants risk punishment by the Court for contempt if they do not obey orders issued by the Monitors. This feature of the order appealed from makes appellants' situation altogether unprecedented in the law. (Page 57)

(12) "And, since the Court may not thus abdicate its judicial function, the Monitors cannot be given the power to make orders in the nature of injunctions." (Page 62)

The Monitors never claimed nor exercised "mandatory" powers. At all times they knew that they were possessed of only advisory or recommendatory powers. Judge Letts' Memorandum Opinion (December 11, 1958) did not hold that the Monitors possessed mandatory powers. By themselves, the Monitors have never claimed anything except advisory and recommendatory function. They admit that they possess no "command" powers or authority. The Monitors, as such, have no power, for example, to force suspension or expulsion (Appellant's Brief, p. 27). Neither the Monitors nor counsel for plaintiff below ever claimed that the Monitors alone have power to issue *enforceable* commands. (Appellants' Brief p. 29) No such claim is made on this appeal. The Monitors have no right or authority of themselves to impose their will upon anyone. Still less have the Monitors mandatory power to remold the Union "closer to their heart's desire" or to have their "every wish gratified." The Monitors are not "*outsiders with virtually dictatorial powers.*" (Emphasis added.) They have received no delegation or *judicial power* from the Court below. They do not exercise the *power of judgment* and the *power to order action* so as to expose Appellants to risk of punishment by the Court for contempt if Appellants refuse to obey "Orders of Recommendation" issued by the Monitors. Least of all have they presumed, as Monitors, to issue *injunctive orders* as if they were judges. The Court below did not abdicate judicial function in favor of the Monitors. It did not give to the Monitors power to make orders in the nature of injunctions. No one is compelled to accept *dictation* from the Monitors. Nowhere in the record before this Court or in the record before the Court below is there a scintilla of evidence that such judicial powers were granted by the Court below to the Monitors or were gratuitously assumed by the Monitors.

To address a lengthy series of arguments and excursions against the various usurpations of power, authority and function just referred to is to miss the crucial point on this appeal.

The Monitors do claim the power and the duty to make reasonable and relevant recommendations within the purview of the consent order. It does not much matter what these "Orders of Recommendations" are *called*. The important thing is that they were and are only *recommendations*, *counsel*, *advice*. They can never be elevated by the mere action of the Monitors into any level of higher authority, power or persuasion. As *Monitorial* recommendations or advice they depend entirely upon their own inherent appeal to reason and goodwill for effectiveness. This is true whether the Monitors seek to advise the appellants into compliance or the Court into enforcement. What the Monitors by majority decision have contended, and what the Court below has approved, is that the Monitors have express and implied power, *in cases where the defendants arbitrarily reject significant, reasonable and relevant recommendations*, to seek enforcement of such recommendations from the Court of Equity below. This is express (and implied) in the Consent Order itself (see last sentence of Section 2 of the Consent Order). It is implicit in the Monitorship as a quasi-receivership.

This is the only interpretation of the Court order that makes sense. Only this interpretation avoids making mockery of the Court below and of its Consent Order. Unless this is the proper interpretation of the Consent Order, the latter was conceived and executed in fraud by Appellants and their attorney. The record shows clearly that this power to seek direction and supervision from the Court was intended by the parties who negotiated the Consent Order for the very purpose of meeting grave violations of the provisional constitution or serious misconduct by the privisional officers during their temporary regime.

Under the consent decree, it is the Court alone which has and retains all of the "mandatory" powers the Monitors are charged in Mr. Williams' brief with usurping. The Court has never abdicated its judicial function and has never delegated power of enforcement to the Monitors. If the Monitors are persuaded that, because of bad will or for some other irrational or arbitrary purpose, Mr. Hoffa and his associates arrogantly refuse to comply with a significant, relevant, and reasonable "Order of Recommendation," they are not required to be passive and indifferent observers. They have the right and the duty to make an application to the Court, on notice to Appellants, to have such issues as defendat's bad will, irrationality, or arbitrariness aired as well as the significance, reasonableness and relevance of the "Order of Recommendation" involved. If the Court agrees with the Monitors, it is the Court which does the ordering and not the Monitors. The Monitors merely present to the Court the reasons why in the first place they made the recommendation or gave the advice. It is up to the Court and to the Court alone to put behind the Monitors' recommendation the coercive thrust and majesty of the law. And, in this connection, the defendants are entitled to their day in court; so that they will have a full and fair hearing on all relevant issues (this is precisely what happened during the trial below, beginning November 5, 1958).

All of this is abundantly clear from the Memorandum Opinion of the Court below: " ... if they (the Appellants) doubted the reasonableness of such recommendations, or doubted that the recommendations were pertinent to the basic purposes of the order, they had recourse to the Court. Upon such matters of disagreement, recourse has always been available to the Court for its ruling and determination of the existing controversy." (JA 167)

Judicial remedies are not wanting, continued the Court, if orders of the Court are violated. There is no judicial remedy available merely to enforce or to punish noncompliance with orders of the Monitors: "Remedies are not lacking in our judicial processes if the orders of the Court are violated, disregarded or ignored. As of now they need not be mentioned or considered." (Emphasis added) (JA 171) The reason why they did not have to be considered or even mentioned at that point was that no order of the Court had, before that time, been issued to back up any recommendation of the

Monitors. The order under appeal was the first which the Monitors ever sought for the purpose of cutting through the obstructions provided by the manifest ill-will, lack of cooperation and corruption of Appellants. Some of the orders which they refused to comply with are backed by such obvious common sense and justice as to tag their non-compliance with shameful bad faith.

The Brief for the Appellants insofar as it misstates the real and crucial issue of this appeal, creates many confusions. This confusion becomes twice confounded because the Appellants' attorney in his Brief also uses ambiguous language in stating the central issue of law involved. There are many places throughout the Brief for Appellants where Mr. Williams, in effect or in words, argues that the Monitors' function is limited (e.g., p. 26) to consultation, advice, and recommendation, as if he were arguing, without saying so clearly, that once the Monitors have given a recommendation they are functus officio; they have no power to go to the Court for instruction, supervision and direction, or to seek enforcement of significant, relevant and reasonable recommendations. In other words, Mr. Williams' language sometimes is susceptible, rather vaguely, of the interpretation that the Court below, as a Court of Equity, and the parties had no purpose except to commit recommendations of the Monitors to the absolute discretion of Mr. Hoffa. This way of presenting the issue would of course make the defendants below come full circle. Here they charge the Monitors with being dictators, imposing their will and their fancy, their heart's desire and their arbitrariness upon the defendants. But if the ambiguous theory now criticized is really part of the Brief for Appellants, they have successfully made of Mr. Hoffa and his associates dictators whose undisciplined and untrammeled will can veto the wishes of Appellees and even the will of a Court of Equity. Such a theory paints the bad faith and the fraud of Appellants in flamboyant colors. It seems to suggest that Mr. Hoffa, et al., have the right in their unfettered judgment to reject significant, relevant and reasonable recommendations;and the Court has no right even to consider the rationale of, or even to listen to the issues raised by, the Monitors' recommendations. Indeed, on this theory, the Court is as impotent before the arbitrary checkmate interposed by Mr. Hoffa as the Monitors are; because this "reasoning" strips the Monitors of the implied and express power to seek the supervision and direction of the Court and to ask the Court for enforcement (last sentence of Section 2 of Consent Order). It is one thing for Appellees to admit that the Monitors do not in and of themselves have mandatory power or judicial functions. It is quite another thing to argue that the Monitors' function is in every single respect strictly limited to advice to Appellants stripped of all power, express or implied, to go back to the Court of Equity, for which the Monitors serve as eyes and ears and as quasi-receivers, for direction and enforcement. If some of the ambiguous portions of Mr. Williams' Brief are intended to make such a flat argument (and they seem to), then indeed the issue is joined, on this most important question of law on which in a sense the whole appeal hangs. The Monitors have never any more than the Court, sought to clothe their "Orders of Recommendation" with command authority or mandatory powers. But Appellees claim that Monitorial functioning does not come to an end when recommendations have been made to Appellants. The Monitors, under the Consent Order, have the express and implied power to go back to the Court which appointed them, and whose officers they are, for the purpose of obtaining direction and enforcement, where arbitrary obstructiveness and bad faith so characteristic of Mr. Hoffa and his associates (as this record shows) motivate non-compliance.

"Even if the Appellants were to violate the consent decree, there is no provision for rescission and reinstatement of the status quo ante. The Court, under its contempt powers, could assure enforcement." (Appellants' Brief, p. 50) There are two things wrong with this statement. In the first place, in the case of serious and flagrant violation of the Consent Order by Appellants, the Court does have the inherent power to rescind the Consent Order on proper application and hearing and to reinstate the status quo ante. In the second place, the Court is not limited to its contempt powers in order to assure enforcement. Sometimes even the most recalcitrant litigants obey Court orders without being motivated by fear of contempt.

What is more, counsel for Appellants in the foregoing quotation makes a critical admission, which for all practical purposes non-suits his entire argument alleging usurpation of power by the Monitors. "The Court, under its contempt powers, could assure enforcement." (p. 50) Surely he is not suggesting that defendants below would apply for contempt to punish themselves. Surely he is not implying that the Court, of its own motion and without a hearing, and without any presentation by the Monitors or by the plaintiffs in the original action of evidence in a full court hearing, has the power to punish Appellants for contempt. Only one rational explanation of this strange sentence is available; native honesty obtruded itself through the artificialities of needed defense: Mr. Williams admits that the Court has the power to enforce the consent decree. But he mutilates and limits the Court's power and imagination by confining both to a "Contempt" function. Moreover, since his hypothesis is violation by Appellants of the consent decreee, enforcement could only be initiated by the Monitors or the plaintiffs below, or possibly some intervenor honestly sympathetic with the plaintiffs below. Such issues could only arise and be adjudicated after full hearing in which the Monitors or the plaintiffs below or one of their class demonstrated that Appellants had failed to do something reasonably required by the Consent Order and its basic objectives.

POINT II

THE BASIC ARGUMENT OF THE BRIEF FOR APPELLANTS IS EQUIVALENT TO THE THESIS THAT UNDER THE CONSENT ORDER APPELLANTS HAVE A RIGHT TO BE ARBITRARY AND TO ACT IN BAD FAITH. Experience teaches that most writings in any language are subject to differences of interpretation. No statement or legal document, rationally put together in the form of many connected sentences, can be limited in its meaning to what it states expressly. One can always unpack implications from the most tightly linked group of express articulations. In a number of places the Brief for Appellants admits that the Consent Order imposes upon Appellants obligations (pp. 5, 6, 7, 19, 21, 22, 24, 41, 55, and 56), and Equity imputes an intention to fulfill an obligation. Mr. Williams' Brief also admits that the Consent Order is implicit with powers not expressly put into words. He admits certain powers created or recognized in the Consent Order, but implied (pp. 22, 24, 38, 68). He seems to admit that the Monitors have the right to make reasonable and relevant recommendations to implement the objectives of the Consent Order. Moreover, the Brief for Appellants (passim) claims that Appellants have the right to refuse obedience to Monitorial recommendations which are neither reasonable nor relevant to the purposes of the Consent Order. Both the Monitors and the counsel for the plaintiffs below concede this. (JA 434) The matter cannot rest here.

It seems clear in principle, and from the Consent Order itself, that the Appellees would at all times have the right to apply to the Court for decision on issues of interpretation, relevancy, reasonableness, supervision, direction, and enforcement. It is not clear from their brief that Appellants would go that far. Any other view would substitute judicial impotence and partizan self-help (the law of the jungle) for the time-honored processes of our courts of justice in the handling of such inevitable issues, whether they arise in good faith and because of honest disagreement, or whether they are part and parcel of a campaign by one of the Appellants to use litigation as a tool for harrassment and obstruction.

It is the central contention of this Brief, and has been the contention of its author from the beginning of the negotiations for the present Consent Order, that the Monitors have the right to seek from the Court enforcement, instruction, and direction, where the Appellants arbitrarily reject relevant and reasonable and significant recommendations made by the Monitors to achieve the objectives of the Consent Order. In other words, where Appellants arbitrarily or out of bad faith reject or refuse to comply with significant, reasonable and relevant recommendations of the Monitors, the Court, on the application of the Monitors, and after proper notice and hearing accorded to Appellants has the right to issue an order to enforce the objectives of the Consent Order, and it has all of the other rights which are express and implied in the last sentence of

Section 2 of the Consent Order. In addition to the right to enforce Monitorial recommendations, the Court has retained by the Consent Order the right to exercise supervision and to give direction to the Monitors for the purpose of fulfilling the basic objectives of the Consent Order. If Appellants by their Brief deny this (and they seem to), they have never done so flatly and clearly, apparently because they are themselves confused by the false issue which they insistently and consistently raise and by the ambiguity of their language in dealing with the real issue, a verbal ambiguity which seems to reflect an intellectual one.

To deny that the Court has the right to enforce on proper notice and after full hearing a reasonable and significant recommendation of the Monitors relevant to the purposes of the Consent Order and designed to implement those purposes, is tantamount to an affirmation by Appellants of their right to be arbitrary in obstructing fulfillment of the Consent Order. Such a denial is logically implicit with the contention that the defendants below have the right to act in bad faith for the purpose of frustrating the objectives of the Consent Order. This follows because, upon the basis of the argument here made, the Monitors only have the right to seek enforcement of reasonable, relevant, and significant recommendations developed for the purpose of fulfilling the basic objectives of the Consent Order in circumstances where Hoffa, et al., oppose such implementation of the Consent Order arbitrarily or out of bad faith.

The issues involved may be raised only on due notice and must be submitted to full hearing before the Court below can make rulings respecting the reasonabless, relevance, significance, and efficacy of the Monitorial Order of Recommendation to accomplish a purpose expressed or fairly implied in the Consent Order and respecting the validity of the objections to the recommendation. Clearly the parties must have a forum in which such differences of opinion can be debated and from which they can derive an authoritative resolution of such controversies. The essential point is, however, that if Mr. Williams rejects the rights of the Monitors, as officers of the Court, to seek direction, superivision and enforcement of proper Monitorial orders by emphasizing Appellants' right of non-compliance, he is in effect saying that the Consent Order guarantees to Mr. Hoffa the right to use his absolute and uncontrolled voluntarism, no matter how tainted with arbitrariness, bad faith, or a criminal desire to shield gangsters and racketeers, as a means of thwarting not only the recommendations of the Monitors (which on this hypothesis are reasonable, relevant, and significant), but even the Court itself. Both the Monitors and the Court are reduced to the role of impotent observers of Mr. Hoffa's arbitrariness or bad faith.

It is indisputable that the Consent Order expressly provides: that "the Monitors * * * * are subject as officers of the Court to supervision and direction of the Court in performing these duties as hereinafter enumerated." (JA 59) To what purpose is such "supervision" and "direction" exercised? What do the words mean? It is, of course, supervision and direction of the Monitors. But since Equity does nothing in vain, and looks to substance rather than form and imputes an intention to fulfill an obligation, supervision and direction of the Monitors must have a relationship to the fulfillment of the Consent Order. It is clear from the whole Consent Order that the Monitors have at least an implied power to serve as the eyes and the ears of the Court to implement the purposes of the Consent Order. Surely, the power of the Court to supervise and direct the Monitors in the performance of their enumerated (as distinct from defined) duties would be an exercise in futility or the merest gesticulation of political or judicial calisthenics, if the Court's supervision or direction was subject to defeasance because of Mr. Hoffa's bad will, his arbitrary will or bad faith. Under such a theory, the Monitors could propose, the Court could ordain, but Hoffa could reject both the ordinance and the proposal arbitrarily and out of bad faith. And the record below is replete with evidence that he would.

The last sentence of Section 2 of the Consent Order was added at the instance of the Court, itself, for the very purpose of emphasizing enforcement power in the Court of reasonable and substantial recommendations of the Monitors relative to the purposes of the consent order. (JA 473-475) Mr. Schmidt's statement on November 5, 1958 was nothing but a repetition of many similar statements heretofore made by him to the Monitors and to the public. Mr. Schmidt was simply asking the Court to go back in memory to the fateful colloquy in Chambers on January 23, 1958, when the final text of the Consent Order was hammered out. This record and the record of the Monitorship are replete with many similar statements, made by Mr. Schmidt, and undoubtedly called to the attention of Mr. Williams. (See Monitors' Exhibit 79; and Mr. Schmidt's dissent in the Monitors' Initial Report.) The record is devoid of any indication that Mr. Williams at any time sought to refute Mr. Schmidt's account of the intention of the parties at the time when the Consent Order was formulated. Indeed, on the last day of the trial below (Thursday,November 13, 1958) as the transcript of proceedings below show, beginning on page 720, the following colloquy took place:

> MR. O'DONOHUE: May it please the Court, I believe Mr. Schmidt would like to make a statement or introduce evidence with reference to his motion to reformation or modification of the decree relative to certain statements that were made prior to the signing of the decree.
>
> MR. SCHMIDT: If your Honor remembers, in my opening remarks, I indicated that there were two important colloquys involving the intention of the parties with respect to the Consent Decree, one that took place on the 20th and the other on the 23rd of January, as nearly as I can remember it, of this year, and I thought that if your Honor had no particular objections to it, I would take the stand in that connection.

As Mr. Schmidt had said in his opening remarks (JA 474), he had written a contemporaneous memorandum, in his hand as he spoke, detailing the highlights of the conference in Mr. Williams' office at which the Consent Order was formulated on January 20, 1958. Mr. Schmidt, as the transcript below (pp. 721 ff) demonstrates, tried to take the stand in order to show that the attorneys who framed the Consent Order had, from the beginning, agreed, first (on January 20, 1958) in Mr. Williams' office and then later in the Judge's Chambers, that the Monitors were to have the right to seek Court enforcement of proper Monitorial recommendations, in cases where Appellants arbitrarily rejected such recommendations. Mr. Williams strenuously objected (p. 721):

> MR. WILLIAMS: Your Honor, I would like to be heard on that. I listened to what Mr. Schmidt said in his opening. I am not going to argue to your Honor the truth or falsity of that, because I think it has no pertinency here..

Then he proceeded to rationalize his objection with the argument "that extrinsic parole evidence is not admissible to change" the consent or "in any way characterize it."

That was a convenient argument, because Mr. Williams was at that time confronted with the horns of a true dilemma:

If he averred the falsity of what Mr. Schmidt said, the Judge who was present when this very matter came up for discussion in Chambers on January 23, 1958, would from his own memory know that Mr. Williams was either mistaken or misstating what had actually occurred. If on the other hand Mr. Williams conceded the truth of Mr. Schmidt's remarks, he would be yielding on the central contention of the Appellees on this appeal: that the Monitors do in fact, under the terms of the Order itself, and because of the frequently expressed intention of the attorneys who framed it, have the right to seek enforcement of reasonable, relevant, and significant Monitorial recommendations against their arbitrary repudiation by defendants below. The result was that Mr. Williams maintained a discreet and noncommital silence. That did not prevent Mr. Williams from averring erroneously or falsely in the Brief for Appellants: "Moreover, even if it were proper to resort to the background of the Consent Order for aid in its construction, nothing in that background supports a construction giving the Monitors command powers and unrestricted range of interference." (Appellants' Brief, p. 17; see also pp. 31, 38 and 42)

Nor does Mr. Williams' espousal of a position diametrically opposed to the position taken in points 1 and 2 of this Brief, prevent him from quoting, apparently with approval, the Initial Report of the Monitors to the District Court below:

> "The Union's position was all the more reasonable in view of the declaration by the Monitors in their initial report to the District Court that:
>
> 'In the event there should not be compliance ... the Board of Monitors will request instructions from the Court ...' (Appellants' Brief, p. 71)"

The offer of testimony which Mr. Schmidt made on the last day of the trial below (Transcript p. 720-721) may not have been necessary in view of the Court's personal knowledge of the conversations between the parties as to the intention of the parties and as to the intended power of the Monitors to seek enforcement, direction or supervision from the Court. But it would certainly have placed into this record a memorandum that could not be gainsaid and a description of the conversations of the parties at the time when the Consent Order took its final shape.

While the Appellants do not say so candidly and clearly (because they do not meet the real issue and they are deceived by their own ambiguities) the drift of their argument seems to be that Mr. Hoffa, by the Consent Order, obligated himself only and solely to listen to recommendations of the Monitors and to consider those recommendations and then to do as he jolly well pleased, regardless of Monitors, Courts, or anyone else. Of course Mr. Hoffa, as the record below shows and as can be judicially noticed from the admissions made by Hoffa before the Senate Select Committee, has been doing precisely that so long that his habit serves him as a claim of right. According to Appellants' Brief (p. 24) the Monitors have an authority which is severely limited (by the adverb "only") as follows:

> "(the authority of the Monitors is)only to seek to persuade the General Executive Board ... The General Executive Board is not required to yield to the persuasion. It must receive the Monitors' counsel and recommendations, and is then free to act in its own best judgment.
>
> " ... nothing in the Consent Order requires the Union to accede to any desire of the Monitors that it deems unwise and unsound." (p. 24)

Apparently there is no standard to which the "best judgment" of the Executive Board must conform. It enjoys a built-in finality if not infallibility of judgment. The good or bad faith of the Union on this argument can not be tested when it claims that it is refusing to obey a Monitorial recommendation because it deems that recommendation "unwise or unsound." One must of course proceed with this critique of the Brief for Appellants somewhat tentatively and speculatively, because the Appellants' argument has been so fouled in the coils of ambiguity, failure to make proper distinctions, absence of forthright statements, and confusion of issues as to prevent easy recognition of the precise position taken on this most important point. What, precisely, would be the position of Mr. Williams in a case where it could be shown that Mr. Hoffa, out of an arbitrary desire to cover up an embezzlement perpetrated by one of his friends in the Teamster officialdom, flatly rejected a recommendation by the Monitors to apply the provisional constitution to such an embezzler by blindly relying on his power to reject the recommendation? Would Mr. Williams say that the Monitors, of and by themselves, can only try to persuade, and if Mr. Hoffa, for any reason at all or no reason, rejects the Monitorial recommendation, the Monitors are powerless to proceed further? Would he take the position that the Monitors, in such a case, would not even have the right to bring the matter to the attention of the Court or to seek enforcement of its recommendation, despite Mr. Hoffa's exhibition of bad faith or arbitrariness? Would he take the further position that even if the Monitors have the power to refer the matter to the Court for its direction or enforcement, the Court is powerless because in the last analysisthe decision in such matters rests entirely in the absolute discretion of Mr.

Hoffa? Nowhere in the Brief for Appellants do I see a forthright treatment of such questions.

The record below shows that Mr. Hoffa is a usurper. It is indisputable that he is only a provisional general president. He has no de jure title to office. Yet there are rather clear implications throughout Mr. Williams' Brief that the Union, in effect, belongs to Mr. Hoffa and his associates, and that the latter have an unconditional claim upon their offices. What they do as officers is their business, not the Court's nor the Monitors' nor the members! Any attack upon Mr. Hoffa is extravagant despite the remarkable unanimity displayed (as this Court must judicially notice) by the AFL-CIO in expelling the Teamster-Internation because of the misdeeds of Mr. Hoffa and his associates, the McClellan Committee, the newspapers and the Court below. The theory of the Brief for Appellants seems to be that Hoffa has a right to be arbitrary in his decisions and actions under the Consent Order. He even has the right in that connection to be motivated by bad faith. Indeed, he has the right to be guilty of the most monumental stupidity or arrogance as well as the most glaringly unconstitutional dictatorship. The Monitors can only recommend or appeal to his non-existent good will or his judgment, warped as it is with egomania. Not even the Court has any power to effectuate the objectives of the Consent Order. Although Mr. Hoffa has usurped his office by a rigged election and is only a provisional general president, he can veto a Court of Equity of the

United States. Such a view of Hoffa's power under the Consent Decree is the only one that squares with the theory that the Monitors have no right under the Consent Decree to seek instruction or enforcement from the Court of relevant, significant, and reasonable recommendations designed to accomplish the objectives of the Consent Order, but thwarted by the veto of Mr. Hoffa, et al., acting out of bad faith or acting unreasonably, whimsically, or arbitrarily.

On August 5, 1958, as the Senate Select Committee Hearings, Part 36, indicate, Senator Mundt questioned Mr. Williams about the authority of the Monitors. Here are the highlights of the interrogation taken from the printed hearings beginning a page 13279:

> SENATOR MUNDT: And would you just give a quick, brief run-down of what their (the Monitors) responsibilites are, and what their authority is, if any?
>
> MR. WILLIAMS: Yes, sir ... under this Consent Decree ... the Board of Monitors is given jurisdiction over, first of all, democratic procedures within the Union. They have the right to counsel with or make recommendations to the General Executive Board of the Teamsters on these matters: On the election of officers, on the right to honest, advertised elections, on the right to fair, uniform qualifications to stand for office, and, furthermore, on the right to freedom to express views at meetings.
>
> "In other words, they have been given the jurisdiction voluntarily by the IBT to police intra-Union democracy.
>
> "Secondly, they have been given jurisdiction voluntarily by the International under the presidency of the witness (Mr. Hoffa) to police financial and accounting controls and precedures of the International.

> "They are authorized to, and they have already, Senator Mundt, made an audit of the International, through Price Waterhouse, and they are continuing to make other audits at the local levels through this same accounting firm. (This happens to be untrue, as the record shows)
>
> "In addition, they have been empowered to see that no officer of the International has any conflict of interest in the performance of his duties. In other words, if any officer of the International has anything which can be construed as an investment which might conflict, or an interest which might conflict with the full performance of his duties to the Internationa, they have the authority to police this and bring it to the attention of the Court ...
>
> "Again, they are authorized and empowered to look into the situation of trusteed locals ... (pp. 13279-13280; emphasis added)

What does it mean to say "they have an authority to police"? Mr. Williams admitted that the Monitors have authority to "police" and to bring to the attention of the Court conflicts of interest. One is left wondering why, if such matters can be brought to the attention of the Court, and if such may be policed by the Monitors, fulfillment of the other obligations of the Consent Order may not be similarly policed and similarly brought to the attention of the Court. One is tempted to wonder further what happens when the attention of the Court is directed to such things. Is the Court impotent? If it has been called to the attention of the Court that Hoffa has been guilty of the dirty ingenuities of a scoundrel, is the Court powerless under the Consent Order to adpot remedial measures? Must the Court and the Plaintiffs and the Monitors be long-suffering, no matter what Mr. Hoffa and his fellow provisional officers do? Is there no remedy to expel them from office? In fine, is a Court of Equity subject to whimsies and arbitrary velleities of a man like Hoffa when it comes to implementation of the objectives of the Consent Order?

While Mr. Williams did not directly answer the next question propounded by Senator Mundt, he evidently wanted to leave the impression that he had:

> SENATOR MUNDT: I would like to ask a question about the consent decree ...
>
> "Is there anything in that arrangement whereby the recommendations of the Board of Monitors have to be accepted? Or what happens under the Consent Decree if the Board of Monitors unanimously recommends to the Teamsters that this be done and the Teamsters say: 'We don't think this is right, we can't do it, or we wouldn't do it.'
>
> "If you have an impasse, what happens?
>
> MR. WILLIAMS: At this moment, Senator, that situation has not taken place (as the record shows herein this answer was something less than the truth).
>
> SENATOR MUNDT: I understood that you said they have all been followed. But this is a conceivable contingency. I am wondering, under the terms of the Consent Decree, what happens then?
>
> MR. WILLIAMS: Under the Consent Decree, if there were an arbitrary pattern of non-cooperation by the General Executive Board and its president, with the recommendation of the Board of Monitors, an arbitrary pattern of ignoring the Board and failing to cooperate, the Board has taken the position, through its chairman, Mr. O'Donoghue that it should go to Judge Letts, who is the judge who signed the Consent Decree, and call these facts to his attention for what action he would take.
>
> SENATOR MUNDT: In other words, you are telling us that this Board does have some power, that there are some teeth in it, that if over a period of time a pattern were developed, that they could enforce it, or they could go to the Court and ask him to enforce it?
>
> MR. WILLIAMS: I am saying that under the Decree, they have recommendatory and advisory powers only. As of this date, the question of whether they have teeth or not is a moot question because it has not arisen. Everything

has been abided by. (Again, this is less than the truth)

SENATOR MUNDT: Is there any question in your mind but what the Court, if it desired, could enforce the recommendations of the Board if the Board found that there were this arbitrary unwillingness, which, happily, does not exist, but which could exist?

MR. WILLIAMS: I don't want to leave you with the impression for a moment, Senator, that the General Executive Board has surrendered the autonomy of this International to the Board of Monitors.

SENATOR MUNDT: I am trying to find out what the facts are.

MR. WILLIAMS: I don't want to suggest to you for a moment that the Board of Monitors can run this Union under the Decree, because we have not given them that kind of power. We have given to them advisory and recommendatory power, and we have adhered to their recommendations. (As the record shows, this is not true)

"If we should refuse to accept their recommendations in an isolated case here and there, certainly there would be nothing they could do about it, because we retain in the Executive Board and in the president the final power to act in the administration and control of this Union. But I did say to you that if there were an arbitrary flaunting(obviously the word intended was flouting) as a pattern of the advice and recommendations of the Board of Monitors, then they have taken the position, and I suppose the chairman of the Board is in a better position to answer than I what he conceives his own functions and powers to be, that they could go to the United States District Court and seek relief there.

SENATOR MUNDT: What I am trying to establish primarily, Mr. Williams, in my own mind, is whether or not this Board has a degree of administrative responsibility and authority which would indicate that perhaps some of the questions that we propose to ask should be directed to them instead of Hoffa and Bennett or Hoffa counseled by Bennett.

"It appears to me, then, from what you have said, that whatever questions are pertinent to this inquiry can appropriately be directed to Mr. Hoffa, and that he continues to function as the president of the Teamsters, and he has not flaunted these things too arbitrarily; he is the man in control and can also speak with authority and as a free agent. Is that correct?

MR. WILLIAMS: Senator, may I say to you I hope this Committee will, in the exercise of its functions, and in the spirit of fairness call the two chairmen of the Board of Monitors who have sat in the office over the past six months during Mr. Hoffa's administration, and ask them, as impartial officers of the Court, whether or not this Union has been conducted in the spirit of this decree, which decree, I may say, encompasses more reforms, I think, than any legislation that has been proposed in either house of Congress, looking toward the restoration of Union democracy and the control of finances of the International. (emphasis added)

SENATOR MUNDT: ... I am trying to get a general idea of his (Mr. Hoffa's) status, vis-a-vis the Court, and vis-a-vis his office.

The only thing I understand is that they entered into a voluntary consent decree and that Mr. Hoffa is here to accept or reject recommendations that are made by the Board of Monitors...

"But I thought you said he had the right to reject them. That would indicate to me that he was a free agent.

MR. WILLIAMS: Senator, perhaps this would answer your question. Mr. Hoffa is here to cooperate with this Committee and answer any questions that are asked bona fides, which are relevant and germane to a legislative purpose, which is the sole function for which this Committee sits ...

SENATOR CURTIS: Mr. Williams, these Monitors who are officers of the Court, as I understand it, are they confining their function to the current operation of the Union?

They are not exercising any powers of investigation over past acts, are they?

MR. WILLIAMS: Senator, I would have to say to you that it was my concept of this decree, when it was entered into, that they would confine themselves to the current operation of this Union, but the fact is otherwise, because they have looked into grievances which are very, very old ... (pp. 13280-13283)

It will be observed that Mr. Williams carefully parried and refused to answer the direct questions involved, Instead of giving his own answer, he kept giving Mr. O'Doncghue's, or the answer of the majority of the Board of Monitors. Actually, nowhere in the record could he substantiate the answer which he attributed to Mr. O'Doncghue to the effect that it would be necessary first to establish a pattern of non-compliance. The word "pattern" nowhere appears in the Consent Decree or anywhere else, except in Mr. Williams' testimony before the Senate Select Committee of August 5, 1958. The Monitors and counsel for the plaintiffs below have taken the position that one refusal, if significant, and if the Order of Recommendation involved is reasonable and relevant to the purposes of the Consent Decree could serve as the basis for an application by the Monitors to the Court below for the purpose of seeking direction or enforcement. What is significant about the foregoing quotation is the carefully contrived strategy by which Mr. Williams refused directly to answer Senator Mundt; and therefore refused to directly commit himself on the question whether the Monitors had the right, under the Consent Order, which Mr. Williams himself largely formulated, to apply to the Court for enforcement of a reasonable, significant and relevant Monitorial recommendation, despite the ill will or the arbitrariness of Mr. Hoffa, et al, in refusing to comply. He also fails to explain how the reforms effected by the Consent Decree can be more effective than legislation unless some sanction can be applied to Mr. Hoffa's customary effrontery.

POINT III

THE MONITORS HAVE AN IMPLIED BUT CLEAR RIGHT, UNDER THE CONSENT ORDER, TO RECOMMEND HOUSE-CLEANING MEASURES TO APPELLANTS. Mr. Williams constantly repudiates the idea that the Monitors have the right to make any recommendations respecting the elimination from the Union of corrupt, racketeering, and criminal leaders.(Appellants' Brief, pp. 10, 12, 16, 21, 26, 27, 28, 29, 31, 33, 47, 63, 72 and 73) In effect Mr. Williams seems thus to deny Mr. Hoffa's duty to enforce the provisional constitution in this respect. It is scarcely necessary, however, to labor this point, since it has been adequately covered in the record (JA 425-433; Initial Report of Board of Monitors to Judge Letts, Defendants' Exhibit 20, pages 116-121; 165-204, especially section 'b' entitled "Powers of Monitors", page 170-171, section 8 entitled "McClellan Committee's Charges" pages 175-176, section 'm' entitled "Fifth Amendment and Union Leaders' Responsibility" pages 178-179; subdivision 'r' entitled "Elimination of Criminals from Union", pages 180-181, section 2 on pages 180-183 entitled "The Provisional Officers Have Not Eliminated Unsavory Characters"; section 6 on page 185 entitled "The Provisional Officers Take No Effective Steps to Institute Needed Reforms in Local Unions"; section 7 entitled "Conflicts Of Interest Are Permitted to Endure", page 185; section 8, entitled "Provisional Officers Tolerated Lawlessness in Locals", pages 185-186, section 13 on page 187 entitled "The Case of Mr.

Belles"; sections 20 and 21 on page 191 entitled respectively "The Constitutional Provision Respecting Surety Bonds" and "Double Standard of Guilt"; JA pages 76-77; and the original and amended complaints herein.)

POINT IV

THE CONSENT DECREE IS NOT VOID FOR UNCERTAINTY. The "argumentation" by which the Appellants seek to demonstrate that the Consent Decree is void for uncertainty is so highly artificial and is the result of such a belabored attempt at construing words and facts out of their proper meaning and context as to deserve scant attention. In his summary, Mr. Williams put this "argument" as follows: Even if the Consent Decree were construable or modifiable to grant the Monitors command functions and authority to act in all areas of Union affairs, the order appealed from, by requiring compliance with all future Board of Monitors orders of recommendation that are reasonable and relevant to the basic purposes of the Consent Order (J.A. 280) is void for uncertainty. (Appellants' Brief, page 18.)

The short answer to this twisted argument is that the Consent Order is not construable or even modifiable so as to grant the Monitors command function and authority to act in all areas of Union affairs. It is, for example, clear on the face of the Order and from the earliest practice of the Monitors that the latter have no right to intrude into collective bargaining, representation cases, contract enforcement, and arbitration of grievances. It is equally clear from the Consent Order that the Monitors have no right to intrude upon the political allegiances of Appellants, or to agitate for their preferences as to legislation or political party. There was never, therefore, any question of the Monitors "seeking to act in all areas of Union affairs."

Actually, there would be no need for these tawdry and counterfeit dialectics on behalf of Appellants if Mr. Williams had the inclination to read Judge Letts' Memorandum Opinion carefully and fairly. He is able, for example, on page 55 of the Appellants' Brief, to write: "The instant order does not provide that the appellants must obey unreasonable orders of the Monitors, only that they must obey those that are 'reasonable and relevant.'" Obviously, a future order qua future is neither reasonable nor relevant, since it does not exist and cannot even be appraised from the point of view of reasonableness and relevance. Cases like United States v. Cohen Grocery Co., 255 U.S. 81 (1921) have no application here. They deal with the question of substantive due process in criminal law. A crime must be defined clearly so that those obligated by the criminal law may know with reasonable certainty what they are to do or what they are to avoid doing. That is elementary, substantive due process. We are not here dealing with a definition of crime in a penal law. We are dealing with what is, as the act of Monitors, admittedly purely a recommendation. Now this recommendation is either relevant, significant, and reasonable, or it is not; and such a recommendation may conceivably be rejected for sound and unsound reasons. In either case, the questions of significance, relevance, reasonableness and the validity of objections can be presented to the Court.

Good faith compliance by Appellants with a Consent Order means, if it means anything at all, that they ought to be sincere and in good faith when they claim in Court that a particular Monitorial recommendation is not in fact reasonable, or relevant, or significant. If they are lying about such contentions to themselves and to others, they are hardly in good faith. If they are sincere and mistaken, their error can be corrected by their day in Court. If they are right, they can have the Court correct the Monitors. It is little short of folly to argue that "the order appealed from, to the extent that it confers upon the Board of Monitors power to issue orders required to be obeyed on pain of contempt, is an invalid delegation of judicial authority." The order appealed from does not to any extent confer upon the Board of Monitors power to issue orders required to be obeyed under pain of contempt. Here is, again, the purest kind of ignoratio elenchi. One might as reasonably argue that the order appealed from, to the extent that it confers upon the Board of Monitors the powers of the President of the United States, is invalid!

It is equally irrelevant to argue: "The requirement that appellant obey future orders is ... void for uncertainty. It would be void even if the future orders were issuable by the Court itself, rather than by the Monitors. The delegation of the ordering power to the Monitors makes the order appealed from doubly invalid." (Appellants' Brief, p. 56) There has been no delegation of ordering power to the Monitors. Mr. Williams is disturbing himself needlessly about facts and issues which do not exist. What, however, does he mean when he says that even if "future orders were issuable by the Court itself, rather than by the Monitors, 'they would be void.' " If he is talking about future (i.e. presently non-existent) orders, it would seem a part of prudence to wait until the future becomes present before discussing them. Until existence gives them form and specification, one can scarcely appraise them. It would be as absurd to argue that the future orders of this Court will be void. If he means that there is something irrational and illegal about the attempt of a Court to hold someone in contempt of Court, under a future, unissued order, there could be no dispute; except that one is left wondering how such an irrational procedure could even be attempted.

There is no "standardless order" which effectuates "an invalid delegation to the Monitors of judicial power." The consent order contains standards which Mr. Williams himself largely drafted; and there is no delegation whatever of judicial power to the Monitors. The Monitors must come to the

Court on application, and notice to defendants, before judicial power can be invoked. Mr. Williams' contentions are so wildly remote from the relevant facts in this case as to suggest that he is talking about another case. On page 57 of the Appellants' Brief Mr. Williams writes: "When the National Labor Relations Board makes an order ... and it is not obeyed, the Board petitions the Court for an order of enforcement. The violator is not guilty of contempt for violating the Board's order, but only for violating the Court's enforcement order." Is it really possible that Mr. Williams does not perceive that this principle is precisely true of the Board of Monitors? When the Board of Monitors makes an order of recommendation, which is relevant, reasonable, and significant; and when that order is not obeyed by the defendants because of ill will or because of arbitrariness; the Board of Monitors has a right to petition the Court below for an order of enforcement or for any other direction which in its supervisory judgment it deems appropriate.

"The order appealed from, as we read it, authorizes the Monitors to command action by the appellant and subjects the appellant to contempt action for disobedience. It makes no provision for an application by the Monitors to the Court for a compliance order before contempt sanctions may be imposed. If we read the order and the memorandum opinion, such pre-contempt compliance proceedings are dispensed with." (pp 57-58, Appellants' Brief) This preposterous reading is traced to the Memorandum Opinion of December 11, 1958, and the order appealed from dated February 9, 1959. Mr. Williams carefully refrains from quoting the language from which such ridiculous meaning is derived. Indeed, on the next page of his brief (page 58), Mr. Williams quotes from the Memorandum Opinion the very language of the Court below which completely contradicts Mr. Williams' bizarre construction: "... if they (the appellants) doubted the reasonableness of such recommendations, or doubted that the recommendations were pertinent to basic purposes of the order, they had recourse to the Court. Upon such matters of disagreement, recourse has always been available to the Court for its ruling and determination of the existing controversy." Why bother going to Court to demonstrate that a Monitorial recommendation is unreasonable? Just disobey it without giving or having even the flimsiest reason. The Court and the Monitors can't do a thing about it!

Unless Mr. Williams is prepared to argue that the defendants below by the Consent Order assumed no obligation of any kind in the face of recommendations by the Monitors, where those recommendations are significant, reasonable, and relevant, he must agree with Judge Letts that

> "the failure of the Teamsters to cooperate and to accord good faith compliance with the orders of recommendation of the Monitors to achieve the basic purposes of the Consent Order has occasioned loss of valuable time. Now that the views of the Court respecting many matters in dispute are known, the Court will expect prompt compliance

> with such orders of recommendation which have been made, and such reasonable orders of recommendation as may be made by the Monitors, touching the matter of house-cleaning, and compliance with all provisions tending to assure that the next convention will be organized and conducted honestly in such a manner as to be free of control by labor bosses while promoting in all respects the interests of the dues-paying members."

The very next paragraph provides the key. It indicates that "remedies are not lacking in our judicial processes if the orders of the Court are violated, disregarded or ignored." (emphasis added) The Court does not say "if the orders of the Monitors are violated."

The remainder of the brief for Appellants on this point derives from such an absurd reading of the facts and of the Consent Order, of the Memorandum Opinion, and of the Order appealed from as to be unworthy of rebuttal. It carries with it, on its face, an inherent rebuttal. No judge could be so stupid as to perpetrate what the Brief for Appellants reads as the meaning of the decision appealed from.

POINT V.

THE CONSENT ORDER AND THE RECORD HEREIN REFUTE THE READING OF SECTION 8 OF THE CONSENT ORDER URGED BY APPELLANTS. For the purpose of refuting the tortured interpretation placed upon Section 8 of the Consent Order by Appellants' Brief (pp. 7, 32, 36, 40, 50) it is sufficient to rely on the memorandum of Monitor Schmidt which appears in the Joint Appendix (pp. 72-84).

POINT VI.

THE RECORD DEMONSTRATES THAT THERE WAS IN FACT A TACIT UNDERSTANDING THAT THE EVIDENCE HAD PROVED APPELLANTS' LIABILITY. The Order (J.A. 56) dissolving the preliminary injunction of October 23rd, 1957, left intact and undisturbed the Findings of Fact and Conclusions of Law upon which the said preliminary injunction was based. Moreover, one of the considerations which Appellants were required to give for the said Order dissolving the preliminary injunction of October 23rd, 1957, was a stipulation, also dated January 23rd, 1958 (J.A. 57), by which certain parties defendant were added to the action and by which these added parties defendant adopted the answer theretofore filed on behalf of the defendants below as well as the entire record in the case to the date of January 23rd, 1958. That record contained among other things the minutes of the Credentials Committee of the 17th Convention, which on their face showed that the 17th Convention had been rigged. That record also contained numerous admissions by defendant Hoffa of malfeasance and misfeasance. Obviously, if the defendants below were confident of their ability to prove that the 17th Convention had not been rigged, they would not have proposed or entered into a settlement. They would certainly have been unwilling, under those circumstances, to assume "the incubus of the monitorship" (Appellant's Brief, p. 7). A General Executive Board sure of its ability to disprove an improper election at the 17th Convention would not have tolerated hanging about its own neck "the millstone of the monitorship." (Appellant's Brief P. 38). (It is odd that they now claim they have been cooperating with millstones and incubi!) Indeed, "the desire to be rid of the monitorship would impel the general executive board" (Appellant's Brief, p. 50) to continue the litigation rather than to submit to the vexation and restriction of the monitorship. As Mr. Williams himself reasoned on page 37 of his Brief, "The 1957 elections were either valid or invalid. If the former, the Appellees had no right to the relief they sought; if the latter, they were entitled to have new elections held." Moreover, the defendants below and their attorney knew very well, that: "A judgment entered after trial would end the controversy one way or the other. If the facts showed that the Appellees' right had been violated, the Court would declare the 1957 elections void and order new ones. If the facts showed otherwise, the Court would dismiss their complaint." (P. 37-38) If the Appellants argue for such inferences now, they can hardly complain if the Court drew such inferences earlier and called them a "tacit understanding".

Perhaps it is true that the "Appellants do not for a moment concede that the evidence introduced by the Appellees tended to prove their case and justify the relief they sought"! (Appellants' Brief pp. 52-53). If it is true, it only goes to prove that self-interest can destroy objectivity and blind a partisan to the most obvious facts. But the record before the Court below would have a different significance for an impartial judge.

If there were no "tacit understanding" as to the corrupt practices of the defendants below, why was there such laudation by Mr. Williams himself of the Consent Order as a constructive reform measure? Why did the Consent Order concern itself with remedies many of which one ought to take for granted among honest men? After the mounds of evidence, much of which took the form of admissions under oath, gathered by the Senate Select Committee before and since the Consent Order, it is a little late in the day to scoff at the idea of a "tacit understanding" such as that to which the Judge referred in his Memorandum Opinion. The Consent Order is scarcely a monument to the probity of Mr. Hoffa, et al. It was not, as Mr. Williams now argues, a judgment for defendants.

POINT VII.

APPELLANTS MISCONSTRUE SECTION 3 OF THE CONSENT ORDER.

The fair meaning and intent of Section 3 of the Consent Order is grossly butchered in Appellant's Brief (pages 22, 23, 29 and 30). The purpose of the Section is explicitly stated in the Consent Order: "To insure the enforcement and protection of all rights of the individual members and the subordinate bodies" (emphasis added) of the Union. Obviously no rights could be insured enforcement and protection unless something effective could eventually be done about them. Certain rights were singled out for special emphasis, namely, those described in sub-paragraphs "a", "b", "c" and "d" of Section 3. The point is that the Board of Monitors was required to counsel with the General Executive Board regarding the enforcement and protection of all rights. That was the first chore imposed upon the Monitors by Section 3 of the Consent Order. In addition, the Section gave to the Monitors a second chore, namely, "to make recommendations upon review of appeals taken pursuant to the provisions of the International Constitution." (emphasis added) Mr. Williams seeks to telescope these two chores as if the counseling (the first chore described above) and the recommendations (the second chore) were both concerned with the review of appeals! Such an interpretation too narrowly limits the power of the Monitors. The Monitors are called upon to make recommendations upon the review of appeals taken pursuant to the International Constitution. That is a relatively narrow class of responsibilities. The duty to consult with the provisional general executive board for the purpose of insuring enforcement and protection of all rights of members and subordinate parties is much broader. Member Schmidt has consistently made this interpretation from the beginning. (J. A. 78-82; 429)

The point is best seen by noting that the provisional officers might easily deny or prevent appeals by aggrieved members, and thus preclude the functioning of the Monitors virtually at will, if Appellants' construction of Section 3 of the Consent Order is correct. Appellants here and everywhere have fundamentally misconstrued and misrepresented the nature of the Consent Order which is the ruling document in this case. Their references to consent decrees in antitrust cases can only mislead this Court. Appellants constantly refer to the Consent Order by placing special emphasis on the contract or agreement implied and on the consent of the attorneys who signed the decree for the parties.

This procedure neglects the fact that the Court signed the decree, too. It is a contract. But it is more especially a court decree.

In one respect it is vastly different from the consent decrees of anti-monopoly suits, to which attorney for

Appellants frequently turns. The Consent Decree of the latter kind has no provision for the intrusions of a court officer, such as a receiver or a monitor. But the Consent Order construed and applied by the Memorandum Opinion and by the Order here under appeal make provision for the surveillance of court officers (Monitors). By the latter, the Court retains direction of the Order and of its execution. It is not just the parties who must be pleased. It is the Court, especially in a class action such as this. The Court is a party or participant in the application of the decree to the changing circumstances which had to be contemplated, because the Monitors are there as the Court's officers.

Appellants are really trying to convert the defeat spelled out in the Consent Order into a virtually unqualified victory. What would the result be for the Teamsters Union, its members, and the welfare of the country as a whole, if this Court should confirm these pretensions to power by usurpers who have brought so much dishonor on the house of labor?

POINT VIII

THE PETITION FOR THE REMOVAL OF MEMBER SCHMIDT FROM THE BOARD OF MONITORS WAS WHOLLY WITHOUT MERIT.

The documentation and evidence in the record below need no argument. They amply support the view of the Court below that the petition to remove Mr. Schmidt was without merit.

See Affidavits of Godfrey P. Schmidt, sworn to May 12, and October 20, 1958; Transcript of Hearings before the Court below on June 26 and June 27, 1958; J. A. 115-145; Deposition by Godfrey P. Schmidt taken by Mr. Williams on November 4, 1958; Transcript of Hearings before the Court below, November 14, 1958.

CONCLUSION: In all other respects, the Appellees, comprising all plaintiffs below except Cunningham, adopt the Brief submitted on behalf of the Monitors. They respectfully pray that upon the basis of the Monitors' Brief and the present Brief the Order below be affirmed.

RESPECTFULLY SUBMITTED,

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below except Cunningham.

United States Court of Appeals
For the
District of Columbia Circuit

FILED APR 17 1959

Joseph W. Stewart
CLERK

BRIEF OF THE INTERVENOR-APPELLANTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,983

JOHN F. ENGLISH, et al., Appellants

v.

JOHN CUNNINGHAM, et al., Appellees

Appeal from the United States District Court
for the District of Columbia

JOSEPH M. WILLIAMSON
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Urbana, Illinois

RAYMOND R. DICKEY
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QUESTIONS PRESENTED

1. Whether the Consent Order entered by the court below on January 31, 1958 is a compromise of a true class action subject to the mandatory notice provisions of Rule 23(c) of the Federal Rules of Civil Procedure and therefore void because of the failure to give notice of the proposed compromise prior to entry thereof as required by that rule.

2. Whether an Order of Construction and Modification of an invalid Consent Order entered by the court below on February 9, 1959 is likewise invalid.

3. Whether the Order of Construction and Modification entered by the court below on February 9, 1959 is void for want of due process under the Fifth Amendment to the Constitution of the United States because notice thereof and an opportunity to be heard thereon were not accorded to all persons bound by that Order.

4. Whether the court below had the judicial power to construe, modify, or change the Consent Order entered by it on December 31, 1958, without the consent of all parties bound by its terms, by an Order of Construction and Modification thereof entered by it on February 9, 1959, which thwarted and negated the basic intent and purpose of such Consent Order.

5. Whether the court below had the judicial power to order the appointment of a "Board of Monitors" vested with broad undefined powers of investigation and housecleaning which do not inhere in a body deriving its power from the judicial function.

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A. The Consent Order Is Void. 11

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(2) The Consent Order is a compromise as defined by Rule 23(c) of the Federal Rules of Civil Procedure. 14

(3) Notice is a mandatory condition precedent to a valid compromise under Rule 23(c) of the Federal Rules of Civil Procedure... 16

B. The Order of Construction and Modification of the Consent Order Is Invalid Inasmuch as It Is a Construction and Modification of an Order Which Is Itself Invalid. 18

II. THE COURT BELOW WAS WITHOUT POWER TO CONSTRUE, MODIFY, OR CHANGE THE CONSENT ORDER OF JANUARY 31, 1958 BY AN ORDER OF CONSTRUCTION AND MODIFICATION WHICH THWARTED AND NEGATED THE BASIC INTENT, OBJECTIVE, AND PURPOSE OF SUCH CONSENT ORDER. 19

III. THE ORDER OF CONSTRUCTION AND MODIFICATION ENTERED BY THE COURT BELOW ON FEBRUARY 9, 1959 IS VOID FOR WANT OF DUE PROCESS UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BECAUSE NOTICE THEREOF AND AN OPPORTUNITY TO BE HEARD THEREON WERE NOT ACCORDED TO ALL PERSONS BOUND BY THAT ORDER. 19

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,983

JOHN F. ENGLISH, et al.,
Appellants

v.

JOHN CUNNINGHAM, et al.,
Appellees

Appeal from the United States District Court
for the District of Columbia

BRIEF OF THE INTERVENOR-APPELLANTS

PRELIMINARY STATEMENT

This brief is submitted by certain intervenors (hereinafter sometimes referred to as the "intervenor-appellants") more fully described hereinafter.

As used herein, the terms set forth below are defined as follows:

1. "Appellants" means the defendants in the cause below, Cunningham, et al. v. English, et al., Civil Action No. 2361-57.

2. "Appellees" means the original plaintiffs in the action below except plaintiff JOHN CUNNINGHAM who is hereinafter sometimes referred to as the "appellant Cunningham."

3. "Intervenor-appellants" means the intervenors in this appeal--namely, ANTHONY DISTINTI, individually and as President of Local #277, International Brotherhood of Teamsters; ROBERT J. COAR, individually and as President of Local #701, International Brotherhood of Teamsters; and WILLIAM E. McKERNAN, individually

and as Secretary-Treasurer of Local #617, International Brotherhood of Teamsters. Each of these intervenors intervenes personally and in a representative capacity for other members of the International Brotherhood of Teamsters similarly situated, including but not limited to more than 1,000 members of the International Brotherhood of Teamsters who have lodged an authorization for intervention by these intervenors in the court below.

4. "Appellant Cunningham" means JOHN CUNNINGHAM, who has noted an appeal from the Order of Construction and Modification entered by the court below on February 9, 1959.

JURISDICTIONAL STATEMENT

Jurisdiction of this appeal is vested in this Court by virtue of Sections 1291 and 1292 of Title 28 of the United States Code.

STATEMENT OF CASE

This is an appeal from an Order of Construction and Modification (of a Consent Order) entered by the United States District Court for the District of Columbia on February 9, 1959. 1/

The order aforesaid arises out of litigation commenced in September of 1957 by thirteen members of the International Brotherhood of Teamsters "for themselves and for all other members" of the International "similarly situated," seeking judicial relief from what their complaint alleged were violations of the International's constitution. The basic objective of the complaint, with its subsequent amendments, was to set aside certain of the actions of the 17th Convention of the International Brotherhood of Teamsters and to secure a new convention at which

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officers of the International would be elected fairly, legally, and democratically through the procedures established by the International's constitution.

After twenty-two days of trial, during which the original parties plaintiff completed presentation of their case to the court but before the defendants put on any evidence in defense, a settlement of the issues raised by the complaint was reached in the form of a Consent Order entered by the court on January 31, 1958. [2/] By the terms of this Consent Order the officers elected at the 1957 Convention of the International Brotherhood of Teamsters were allowed to assume office "provisionally," the constitution enacted at that Convention allowed to be "provisionally" effective, and a board of three monitors was appointed to "counsel with" and "recommend" to the Executive Board of the International toward the end of securing for all members of the International Brotherhood of Teamsters: (a) the right to vote periodically for elective officers; (b) the right to honest and advertised elections; (c) the right to fair and uniform qualifications to stand for office; and (d) the right to freedom to express views at local and international meetings.

That the Consent Order constituted a full compromise settling and disposing of the litigation commenced by the original plaintiffs is forcefully demonstrated by the various colloquies between counsel for the original parties plaintiff, counsel for the defendants, and the court at the time this order was entered. In presenting the order to the trial court, counsel for defendants described it as a "disposition of this case" bringing it to an "equitable conclusion." [3/] In reply, Godfrey P. Schmidt, counsel for the original parties plaintiff (who is now a Monitor), stated:

[2/] J. App. 58.

[3/] Tr. 3721, 3722.

> "If the Court please, may I say in the first place that I join in everything Mr. Williams has stated to this Court, and my colleagues will after me.
>
> "I have gone over this consent order and the arrangements for settlement of this very important litigation with great attention to every detail, and I think it is as fine a settlement of as difficult a problem as I have ever been confronted with in my life." 4/

Judge Letts for his part complimented counsel for both sides for "a settlement of these great issues." 5/

In September of 1958, two of the Monitors filed a "Petition of the Board of Monitors for Construction, Reformation and/or Modification of the Consent Order and for Instructions and Orders of Compliance." 6/ Subsequently a separate similar petition was filed by Godfrey P. Schmidt, as counsel for appellees. These petitions sought to establish for the Monitors mandatory, as distinguished from recommendatory, powers broad enough to enable them to make sweeping intervention into the internal affairs of the International union for the purpose of conducting a so-called "housecleaning." In addition, the Board of Monitors sought clarification and a court ruling on the applicability of Rule 23(c) of the Federal Rules of Civil Procedure to the Consent Order. 7/

Following hearings on the petitions aforesaid, Judge Letts on December 11, 1958 entered a Memorandum Opinion 8/ holding that the Monitors possessed, as prayed for in their petition, comprehensive mandatory powers authorizing them to make sweeping intervention into the internal affairs of the International union for the purpose of conducting a so-called "housecleaning."

4/ Tr. 3734-3735.

5/ Tr. 3738.

6/ J. App. 64.

7/ J. App. 109.

8/ J. App. 164.

After some delay occasioned by a "Petition for Leave To File a Petition for Writ of Mandamus or Writ of Prohibition" filed with this Court on January 6, 1959 by one of the intervenor-appellants and John Cunningham, the Court on February 9, 1959 entered its Order of Construction and Modification.[9] The order, which was consistent with its prior Memorandum Opinion, drastically changed the concept of the monitorship as originally set forth in the Consent Order and, in addition, modified and amended the Consent Order by deleting therefrom the privilege therein granted the International of calling a new convention after one year and substituting in lieu thereof a provision making the time for a convention subject to final approval of the Court upon recommendation of the Board of Monitors.

With respect to the applicability of Rule 23(c) of the Federal Rules of Civil Procedure, the Court in its Memorandum Opinion said:

> "The Court is presently of the opinion that the Rule is not applicable for the reason that the consent order is not a final settlement of any essential issue. The controlling issue in the case arose from the request of the plaintiffs that the individual defendants herein should not be permitted to assume the duties of the offices to which they had been elected. Such issue has not been determined. By the consent order such officers so elected were permitted to proceed upon the duties of their offices provisionally. Such permission was temporary only and subject to revocation. The Court views the consent order as procedural and within the control of the Court." (Emphasis supplied.)

From the Order of Construction and Modification aforesaid, the defendants below, as appellants herein, have taken an appeal. The intervenor-appellants, more fully described hereinafter, seek relief from the same Order, having intervened in the appeal herein. In addition, John Cunningham has appealed from the same Order which is before this Court as Case No. 15,033.

Each of the intervenor-appellants is a member in good standing of the International Brotherhood of Teamsters. Each of the intervenors seeks intervention herein for himself individually and as a representative of other members of the International similarly situated, some of whom have authorized them to intervene on their behalf in the court below.[10]

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[9] J. App. 280.

None of the intervenor-appellants has ever authorized the original parties plaintiff, all of whom except John Cunningham are appellees herein, to represent their interests in the litigation giving rise to this appeal. The intervenor-appellants are of the opinion and belief that none of the original plaintiffs or any of them adequately, fairly, or faithfully represent or have represented them or members of the International similarly situated in (1) filing the original complaint, or (2) agreeing to entry of the Consent Order of January 31, 1958 in compromise of the relief sought by the original complaint, or (3) petitioning the court below for modification or construction of the Consent Order.

Each of the intervenor-appellants, on behalf of themselves and other members of the International similarly situated, state unequivocally that it is their opinion and belief that the original plaintiffs have failed to adequately, fairly, and faithfully discharge the obligations imposed upon them by virtue of their ostensible representation in the litigation giving rise to this appeal.

Neither the intervenor-appellants nor other members of the International similarly situated were given notice of the filing of the original cause from which the instant appeal arises, the proposed Consent Order, the Consent Order, the petition for modification and construction of the Consent Order, the hearing on the petition aforesaid, or the entry of the order thereon. These facts are undisputed.

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[10] See PRELIMINARY STATEMENT herein.

Each of the intervenor-appellants and other members of the International similarly situated have a joint and common right with their companion intervenor-appellants and other members of the International similarly situated to the relief sought in the original complaint herein--namely, to set aside certain of the actions of the 17th Convention and to secure a new convention, to elect officers of the International Brotherhood of Teamsters by free expression of the will of the majority of the members thereof through the duly prescribed procedures established by the International constitution, and to have the affairs of the International administered through the duly constituted procedures established by the International constitution and its officers who are elected pursuant thereto.

On March 5, 1959, the intervenor-appellants lodged with the court below a motion to intervene in the original cause giving rise to this appeal. Attached to their motion as an exhibit was a "Motion To Vacate Consent Order Dated January 31, 1958, or To Vacate the Order of Modification and Construction Thereof Dated February 9, 1959," with a memorandum in support thereof. Subsequently, on March 10, 1959, these intervenor-appellants filed a supplemental exhibit to their motion to intervene below, said exhibit being a "Notice of Appeal" from the Court's order construing and modifying the Consent Order, which order is the subject of this appeal.

Opposition to this motion was filed by Godfrey P. Schmidt, Monitor and counsel for appellees, on March 19, 1959, which was followed by the reply of these intervenor-appellants on March 25, 1959.

Intervenor-appellants' motion to intervene in the court below is presently pending before that court.

On March 25, 1959, this Court entered an order herein expediting the time for filing briefs, statement of points, and statement of contents of the joint appendix. By the terms of this order appellants were given to April 3, 1959 to file and serve their brief, and oral argument on the cause was set for April 15, 1959.

Believing in the advisability of a single determination of all issues raised by the instant appeal, intervenor-appellants intervened herein. Such intervenor-appellants would in any event ultimately appeal from the very same order which is the subject of the appeal herein, if permitted to intervene below. If not permitted to intervene below, an appeal would lie from the denial of such intervention and ultimately the very same issues which are now before the Court would come before the Court again.

STATEMENT OF POINTS

1. The Consent Order entered by the court below on January 31, 1958 is void because the court below did not have the judicial power or jurisdiction to approve it without first giving notice of such proposed order to all persons bound by the order as provided for and required by Rule 23(c) of the Federal Rules of Civil Procedure.

2. The Order of Construction and Modification of the Consent Order entered by the court below on February 9, 1959 is invalid inasmuch as it is a construction and modification of a Consent Order which itself is invalid. To be valid, an order of construction and modification must be based upon a valid order.

3. The Order of Construction and Modification entered by the court below on February 9, 1959 constituted a denial of due process under the Fifth Amendment to the Constitution of the United States to the intervenor-appellants herein because they were not given notice thereof and an opportunity to be heard thereon although they were bound by the terms of such order.

4. The court below did not have the judicial power to construe, modify, or change the Consent Order, without the consent of all persons bound by its terms, by an Order of Construction and Modification which thwarted and negated the basic intent and purpose of such Consent Order.

5. The court below did not have the judicial power to order the creation of a Board of Monitors vested with broad undefined powers of investigation and "housecleaning" which are not inherent in a body deriving its power from the judicial function.

SUMMARY OF ARGUMENT

The theory of the instant brief and argument contained herein can best be summarized by reference to the questions presented on page (i) hereof. These questions set forth the real issues forming the substance of the argument contained herein. Answering these questions in seriatum fashion, this brief contends:

First, that the Consent Order entered by the court below on January 31, 1958 is a compromise of a true class action and that it is therefore subject to the mandatory notice provisions of Rule 23(c) of the Federal Rules of Civil Procedure. Because the mandatory notice requirements of this rule were not observed, and this fact is undisputed, the Consent Order is void and of no force and effect.

Second, that inasmuch as the Consent Order is void and of no force and effect, the Order of Construction and Modification of that Order is likewise void, because a void order cannot be made to serve as the basis for a valid subsequent order. Any invalidity of the Consent Order itself therefore renders the Order of Construction and Modification invalid.

Third, the Order of Construction and Modification entered by the court below on February 9, 1959 and the Consent Order are void for want of due process under the Fifth Amendment to the Constitution of the United States, because notice thereof and an opportunity to be heard thereon were not accorded to all persons bound thereby. Due process requires that before a person may be bound by a judgment or order in personam, he must be designated as a party or adequately represented by existing parties. Furthermore, even assuming adequate representation, notice and an opportunity to be heard on the proposed Order of Construction and Modification were essential to due process. There was no notice in the instant case, nor were all persons bound by the Order adequately represented by the existing parties. Such Order was therefore void as contrary to due process.

Fourth, that the Court did not have the judicial power to construe, modify, or change the Consent Order by an Order of Construction and Modification which thwarted and negated the basic purpose and intent of the Consent Order. Because the Court in its Order of Construction and Modification exceeded its authority by drastically changing the concept of the Consent Order, changing its purpose, effect, intent, and objective, the Order of Construction and Modification is void. And finally,

Fifth, the court below, which is vested with judicial powers only, did not have the power to appoint a Board of Monitors vested with broad powers of investigation. Such powers do not inhere in a body deriving its power from the judicial function. For this reason also, the Consent Order and the Order of Construction and Modification which vested non-judicial powers in a so-called Board of Monitors are void.

ARGUMENT

I. TO BE VALID, AN ORDER OF CONSTRUCTION AND MODIFICATION OF AN ORDER MUST BE BASED UPON A VALID ORDER. THE ORDER OF CONSTRUCTION AND MODIFICATION ENTERED BY THE COURT BELOW ON FEBRUARY 9, 1959 IS INVALID INASMUCH AS IT WAS BASED UPON AN INVALID CONSENT ORDER.

A. The Consent Order Is Void.

Rule 23 of the Federal Rules of Civil Procedure provides, in pertinent part, as follows:

> "(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more of them, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is (1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right, and a member of the class thereby becomes entitled to enforce it; . . .
>
> "(c) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the *proposed* dismissal or *compromise* shall be given to *all members* of the class in such manner as the court directs . . ." (Emphasis supplied.)

The Consent Order entered by the court below on January 31, 1958, is a compromise within the meaning of Rule 23(c) aforesaid, with respect to litigation defined "in paragraph (1) of subdivision (a)" of the same rule, and is hence subject to the mandatory notice requirement of Rule 23(c). Because notice was not given to all persons bound by the Order, including but not limited to the intervenor-appellants, it is submitted that the Consent Order is null, void ab initio, and of no force or effect. This single issue is dispositive of the entire appeal now before the Court. Set forth below is the legal analysis which compels this conclusion.

(1) The rights sought to be enforced by the appellees are among those defined by Rule 23(a)(1) of the Federal Rules of Civil Procedure.

Although parties are free to attach such descriptive labels to litigation as they may choose, their designations as such are not controlling. Cross v. Oneida Paper Products Co., 117 F.Supp. 919 (D.C. N.J., 1954); Hansberry v. Lee, 311 U.S. 32, 61 S.Ct. 115 (1940); 3 MOORE'S FEDERAL PRACTICE, 3423. It is the nature of the claim which is asserted rather than the descriptive label attached by the parties which determines the nature of the action. Hansberry v. Lee, supra; Underwood v. Maloney, 14 F.R.D. 222 (E.D. Pa., 1953).

In Underwood v. Maloney, supra, twelve members of a local union, on their own behalf and on behalf of all members of the local, sued the president of the International Union of Operating Engineers, seeking to nullify an order of supvervision made by the International through its president and to restore control of the local to its membership. The court held that the action of the plaintiffs was an assertion of a claim involving a common interest and was therefore a true class action within the meaning of Rule 23(a)(1) of the Federal Rules of Civil Procedure. In its opinion the court stated:

> "In determining whether or not an action is a true class action regard must be had for the nature of the claim asserted by the plaintiff or plaintiffs. In the instant case, applying that test, this is clearly a true class action. Plaintiffs seek an injunction against the defendants restraining them from exercising supervision or control over the property, business affairs, and membership of the local union of which they are members, and seeking further the restoration of the president of the local. All of the relief sought in this action indicates that plaintiffs are asserting a claim involving a common interest, a joint interest, on behalf of all the membership of the local union . . . The action is therefore a true class action and is properly maintainable provided the plaintiffs are such representatives of the class as will fairly insure the adequate representation of all. A finding that the plaintiffs will fairly insure adequate representation of all is a condition precedent to the maintenance of a class action and is a question

> of fact for the trial court to pass upon. Pelelas v. Caterpillar Tractor Co., 7 Cir., 113 F.2d 629. On this point there is very little at this stage of the proceeding upon which the court may make a finding of fact as to the adequacy of representation. It is true that plaintiffs must establish that they are such representatives of the class as will fairly insure the adequate representation of all, otherwise, the action would be dismissed as a class action. See Knowles v. War Damage Corp., 83 U.S. App. D.C. 388, 171 F.2d 15; Weeks v. Bareca Oil Co., 7 Cir., 125 F.2d 84; cf. Hansberry v. Lee, 311 U.S. 32, 61 S.Ct. 115 . . ." (14 F.R.D. at 227)

Tested by this standard, the instant litigation originally brought by thirteen members of the International Brotherhood of Teamsters, on behalf of themselves and other members of the International similarly situated, seeking to set aside certain of the actions of the 17th Convention of the International Brotherhood of Teamsters and to secure a new convention at which officers of the union would be elected fairly, legally, and democratically through the procedures established by the union's constitution, is a true class action within the purview of Rule 23(a)(1) of the Federal Rules of Civil Procedure. All rights which are asserted are joint and common to all members of the International Brotherhood of Teamsters. Underwood v. Maloney, supra; Cross v. Oneida Paper Products Co., supra; Tisa v. Petofsky, 90 F.Supp. 175 (S.D. N.Y., 1950); Tunstall v. Brotherhood of Locomotive Firemen, et al., 148 F.2d 403 (C.A. 4, 1945), approved in Brotherhood of Locomotive Firemen v. Graham, 84 App. D.C. 67, 175 F.2d 802 (C.A. D.C., 1948), reversed on other grounds 338 U.S. 232, 70 S.Ct. 14 (1949). Even if the rights sought to be enforced by the original plaintiffs are "several" rather than common and joint, the Consent Order and the Order of Construction and Modification construing the Consent Order are invalid. Although no authority or theory is presented in the complaint spelling out just what personal, several rights in the administration of union affairs could be asserted by the original plaintiffs individually, it is clear that if the rights are several, only those persons who were actually parties to the Consent Order and the Order of Modification could possibly be bound thereby. Hansberry v. Lee, supra. The Consent Order and the Order of Construction and Modification, however, by their very terms affect the rights and property of many persons other than those who are actually parties thereto. In view of this, even if the rights enforced are several, the Consent Order of January 31, 1958 and its construction or modification by Order of February 9, 1959 are clearly improperly entered and void insofar as they adversely affect the rights of intervenor-appellants and other members of the International Brotherhood of Teamsters who were never before the Court.

(2) The Consent Order is a compromise as defined by Rule 23(c) of the Federal Rules of Civil Procedure.

Nowhere in its language does Rule 23(c) except from its purview, as suggested by the court below in its Memorandum Opinion, provisional compromises, temporary compromises, or interlocutory compromises. The rule applies to all compromises alike, whether provisional, interlocutory, temporary, or final.

In view of this, the statements of counsel for both appellees and appellants, as well as the statements of the court below characterizing the Consent Order as a settlement, themselves dispose of the contention that the Consent Order is not subject to the provisions of Rule 23(c).

The word "compromise" is not a term of limited meaning and has been broadly defined as any arrangement between litigants for settling issues by mutual concessions. 8 WORDS AND PHRASES, 311. BLACK'S LAW DICTIONARY, 4th Ed., at page 359, defines the word "compromise" as follows:

> "An arrangement arrived at, either in court or out of court, for settling a dispute upon what appears to the parties to be equitable terms, having regard to the uncertainty they are in regarding the facts, or the law and the facts together . . . A settlement of differences by mutual concessions or an adjustment of matters in dispute by mutual concessions . . . ."

The term "settlement," which the Court and counsel for appellees and appellants used to characterize the Consent Order, thus describes a compromise. That the Consent Order was a compromise is indisputable. It was an arrangement between the original plaintiffs and the International Brotherhood of Teamsters, determining the litigious issues raised by the complaint and its amendments. Prior to the Consent Order, all rights of the parties to the litigation were determinable as a justiciable controversy by the Court; after entry of the Order, however, all rights of the parties to the litigation were determinable only by reference to the four corners of the Consent Order itself.

An important consideration in determining whether or not a step taken in class litigation constitutes a "compromise" within the meaning of Rule 23(c) is its effect on other members of the class. Malcolm v. Cities Service Co., 2 F.R.D. 405 (D.C. Del., 1942); Piccard v. Sperry Corp., 36 F.Supp. 1106 (S.D. N.Y., 1941), affirmed 120 F.2d 328 (C.A. 2, 1941). The doctrine of res judicata applies to true class actions. Supreme Tribe of Ben-Hur v. Cauble, 255 U.S. 356, 41 S.Ct. 338 (1921); 3 MOORE'S FEDERAL PRACTICE, 2d Ed., 3470-3472. Applying that doctrine to the instant proceeding, it would appear that after entry of the Consent Order provisionally installing the officers of the defendant International, no member of the International Brotherhood of Teamsters could question the legality of the election of officers at the 17th Convention except in accord with the express or implied terms of the Consent Order itself. Yet the basic objective of the complaint as filed was to set aside the election of officers at the 17th Convention and to secure a new election of officers through the democratic procedures provided by the International constitution. The Consent Order therefore drastically affected the rights of the intervenor-appellants and other members of the International Brotherhood of Teamsters similarly situated by foreclosing their ability to seek the relief prayed for in the complaint and to challenge the legality of the elections aforesaid. Under the Consent Order there is no immediate prospect of a new convention or election, and there exists a clear danger that the procedures established through the Consent Order could exist for so long a period of time as to cause irreparable injury to the International and its constituent bodies which the Consent Order was ostensibly designed to protect. Examined, therefore, in the context of its effect upon intervenor-appellants and other members of the International similarly situated, as well as in the context of the meaning of the term "compromise" as construed by the foregoing authorities, the Consent Order is certainly a compromise.

Curiously, and very significantly, the Court in its Memorandum Opinion concluded that the Consent Order was not a compromise within the meaning of Rule 23(c) because it was "procedural and within the control of the Court." Rule 23(c) of the Federal Rules of Civil Procedure, it must be noted, is a rule of procedure, and the Court's conclusion therefore, in this respect, defies analysis.

(3) Notice is a mandatory condition precedent to a valid compromise under Rule 23(c) of the Federal Rules of Civil Procedure.

Notice to all members of a class who will be bound by a proposed compromise is a mandatory condition precedent to court approval under Rule 23(c) of the Federal Rules of Civil Procedure. Cross v. Oneida Paper Products Co., supra; see also

Hovenden v. Chandler, 8 Fed. Rules Serv. 23c.1, Case 3, page 517 (D.C. Okla., 1945). The requirement of notice is an expression of public policy designed to protect members of a class who are not actually before the court against unjust and unfair settlements. It has been held, therefore, that any compromise or dismissal of a class action entered without notice to the members of the class bound by the action will not be given the effect of res judicata. Winkelman v. General Motors Corp., 39 F.Supp. 826 (S.D. N.Y., 1940). See also Robertson v. Limestone Mfg. Co., 20 F.R.D. 365 (W.D. S.C., 1957); Cohen v. Young, 127 F.2d 721 (C.A. 6, 1942); Birnbaum v. Birrell, 17 F.R.D. 409 (S.D. N.Y., 1955).

Under Rule 23(c) the notice required is of a "proposed" dismissal or compromise, and it is therefore clear that such notice must be given before, and not after, entry of a dismissal or compromise. Because of this, it cannot be argued that any notice of the Consent Order, or its terms, published in "THE INTERNATIONAL TEAMSTER" subsequent to entry of the Consent Order "cured" the invalidity of the Consent Order which had been entered without the notice required by Rule 23(c) of the Federal Rules of Civil Procedure.

Failure to follow a "mandatory" statutory provision renders the proceeding to which it relates illegal and void. French v. Edwards, 80 U.S. (13 Wall.) 506, 511 (1871); Escoe v. Zerbst, 295 U.S. 490, 55 S.Ct. 818 (1935); 50 Am.Jur., STATUTES, Section 20, pp. 43-44, and cases cited therein.

Even where the parties were personally before the court it has been held that the failure to comply with the requirements of Rule 55(b)(2) of the Federal Rules of Civil Procedure (requiring that three days' notice be given of a hearing on an application for a default judgment) results in a denial of due process, rendering the judgment entered void. Bass v. Hoagland, 172 F.2d 205 (C.A. 5, 1949), cert. denied 338 U.S. 816, 70 S.Ct. 57 (1949); Ken-Mar Airport, Inc. v. Toth Aircraft & Accessories, 12 F.R.D. 399 (W.D. Mo., 1952). Rule 23(c) deals with a far more sensitive situation than does Rule 55(b)(2) since, in the latter instance, the party affected is himself before the court and has the full opportunity to protect his own interests.

In the present case, substantial rights of intervenor-appellants and other members of the International Brotherhood of Teamsters have been adversely affected (as members of a class) by the Consent Order even though they were not before the Court and were never given notice of their right to object to entry of such Consent Order. Because the courts appear unanimous in holding that the notice requirement of Rule 23(c) is mandatory, it is submitted that the Consent Order is illegal and void ab initio, because the provisions of that rule were not observed by the court below or the parties in entering the Consent Order.

B. The Order of Construction and Modification of the Consent Order Is Invalid Inasmuch as It Is a Construction and Modification of an Order Which Is Itself Invalid.

A judgment which is void in the first instance cannot serve as a basis for maintenance of an action thereon. Western Life Indemnity Co. v. Rupp, 235 U.S. 261, 35 S.Ct. 37 (1914); Wetmore v. Karrick, 205 U.S. 141, 27 S.Ct. 434 (1907). Such a judgment has no legal effect, binding force, or efficacy for any purpose. It cannot affect, impair, or create rights, and it may be attacked at any time. A void judgment is therefore a nullity, and the general rule is that a void judgment cannot be cured by subsequent proceedings. 30A Am.Jur., JUDGMENTS, Sections 45 and 46. By analogy, an order such as the Consent Order cannot be made to serve as a valid basis for a subsequent order such as the Order of Construction and Modification, nor can the invalidity of the prior Consent Order be cured by a subsequent Order of Construction and Modification.

The invalidity of the Consent Order has been fully demonstrated hereinabove. To allow it to serve as the basis for a valid order of modification or, in the alternative, to allow the Order of Modification to cure its basic invalidity would derogate from the fundamental tenets of due process which the Fifth Amendment to the Constitution of the United States secures.

II. THE COURT BELOW WAS WITHOUT POWER TO CONSTRUE, MODIFY, OR CHANGE THE CONSENT ORDER OF JANUARY 31, 1958 BY AN ORDER OF CONSTRUCTION AND MODIFICATION WHICH THWARTED AND NEGATED THE BASIC INTENT, OBJECTIVE, AND PURPOSE OF SUCH CONSENT ORDER.

The invalidity of the theories of the court below in construing and modifying the Consent Order culminating in the entry of the Order of Construction and Modification are fully demonstrated by the appellants' brief, in Sections I and II. These sections are therefore adopted and incorporated herein by reference as part of this brief.

III. THE ORDER OF CONSTRUCTION AND MODIFICATION ENTERED BY THE COURT BELOW ON FEBRUARY 9, 1959 IS VOID FOR WANT OF DUE PROCESS UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BECAUSE NOTICE THEREOF AND AN OPPORTUNITY TO BE HEARD THEREON WERE NOT ACCORDED TO ALL PERSONS BOUND BY THAT ORDER.

It is a cardinal principle of Anglo-American jurisprudence that one is not bound by a judgment in personam in which he is not designated as a party or to which he has not been made a party by service of process. Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565 (1878). To this rule there is a recognized exception that, to an extent not precisely defined by judicial opinion, the judgment in a class or representative suit to which some members of the class are parties may bind members of that class or those represented who were not made parties to it. Smith v. Swormstedt, 16 How. 288, 14 L.Ed. 942 (1853); Supreme Tribe of Ben-Hur v. Cauble, supra.

The class suit is a creation of equity to enable it to proceed to a decree in suits where the number of persons interested in the subject of the litigation is so great that their joinder as parties in conformity with the usual rules is impracticable. In such cases where the interests of those not joined as parties are the same as the interests of those who are parties, and where the existing parties fairly represent persons who are not parties bound by the litigation, in the prosecution of the litigation the court will, in a class action, proceed to a decree. Hansberry v. Lee, supra. Nevertheless, the framework within which such litigation proceeds must conform to the substantive and procedural requirements of the due process clause of the Fifth Amendment to the Constitution of the United States. Thus, there is a failure of due process, invalidating a judgment, where the persons ostensibly bound by a class decree were not adequately represented in the action or were not afforded notice and an opportunity to be heard in the action.

While the original plaintiffs in the court below sought to enforce for themselves and all other members of the International similarly situated joint and common rights, as collectively belonging to all members of the International, no finding was ever made by the court below that the original plaintiffs constituted a class of persons adequately representative of all members of the class whose rights they sought to enforce. Minimal standards of due process, however, require this inasmuch as adequate representation is a condition prerequisite to maintenance of a class action. For this reason, a specific finding that there has been a showing of adequate representation must be made by any court prior to entry of any order affecting the rights of a class in any manner. See Underwood v. Maloney, supra; Pelelas v. Caterpillar Tractor Co., 113 F.2d 629 (CA 7, 1940).

In 3 MOORE'S FEDERAL PRACTICE, supra, at 3427, the writer states that the interests of all main representatives must be coextensive and compatible with the interests of all other members of the class whom he would represent. Thus, in Hansberry v. Lee, supra, the Supreme Court denied the effect of res judicata to a judgment of the state court in the purported class action on the ground that the plaintiffs in the first action who had sought to enforce a restrictive covenant applicable to the land within a certain area did not adequately represent the defendants in the second action who, although owners of the land within the area, desired to void the restriction. The Supreme Court said:

> "Because of the dual and potentially conflicting interests of those who are putative parties to the agreement in compelling or resisting its performance, it is impossible to say, solely because they are parties to it, that any two of them are of the same class. Nor without more, and with the due regard which due process exacts, can some be permitted to stand in judgment for all.
>
> "It is one thing to say that some members of a class may represent other members in a litigation where the sole and common interest of the class in the litigation, is either to assert a common right or to challenge an asserted obligation. Smith v. Swormstedt, supra; Supreme Tribe of Ben-Hur v. Cauble, supra; Groves v. Farmers State Bank, 368 Ill. 35, 12 N.E.2d 618. It is quite another to hold that all those who are free alternatively either to assert rights or to challenge them are of a single class, so that any group merely because it is of the class so constituted, may be deemed adequately to represent any others of the class in litigating their interests in either alternative. Such a selection of representatives for purposes of litigation, whose substantial interests are not necessarily or even probably the same as those whom they are deemed to represent, does not afford that

> protection to absent parties which due process requires. The doctrine of representation of absent parties in a class suit has not hitherto been thought to go so far. See Terry v. Bank of Cape Fear, C.C., 20 F. 777, 781; Weidenfeld v. Northern Pac. Ry. Co., 8 Cir., 129 F. 305, 310; McQuillen v. National Cash Register Co., D.C., 22 F.Supp. 867, 873, affirmed, 4 Cir., 112 F.2d 877, 882; Brenner v. Title Guarantee & Trust Co., 276 N.Y. 230, 11 N.E.2d 890, 114 A.L.R. 1010; cf. Wabash R. R. Co. v. Adelbert College, 208 U.S. 38, 28 S.Ct. 182, 52 L.Ed. 379; Coe v. Armour Fertilizer Works, 237 U.S. 413, 35 S.Ct. 625, 59 L.Ed. 1027. Apart from the opportunities it would afford for the fraudulent and collusive sacrifice of the rights of absent parties, we think that the representation in this case no more satisfies the requirements of due process than a trial by a judicial officer who is in such situation that he may have an interest in the outcome of the litigation in conflict with that of the litigants. Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749, 50 A.L.R. 1243." (at 44-45)

Again, in Giordano v. Radio Corporation of America, 183 F.2d 558 (C.A. 3, 1950)--a suit brought to prevent the plaintiff and others from being expelled from a labor union--the court held the suit could not be maintained by the plaintiff on behalf of the whole membership of the local union of the class where it appeared that the membership was sharply divided on the question of the expulsion of the plaintiff and his associates.

Although the foregoing authorities indicate that adequate representation is a condition precedent to the maintenance of a class action, the conspicuous absence of such finding in the instant litigation leaves little room for doubt of the representative inadequacy of the original parties plaintiff. Surely thirteen members of the International Brotherhood of Teamsters cannot be said under the circumstances to fairly or adequately represent the full class of 1,600,000 members. See Isaac v. Milton Mfg. Co., 33 F.Supp. 732 (M.D. Pa., 1940).

The intervenor-appellants were never afforded an opportunity to be heard, and their interests were not represented in the litigation culminating in either the Consent Order entered by the Court on January 31, 1958 or the Order of Construction and Modification entered by the Court on February 9, 1959.

Furthermore, the actions of the original plaintiffs culminating in the entry of the Consent Order and the Order of Construction and Modification are clearly antagonistic to and in conflict with the interests of these intervenor-appellants who desire an early convention and election of officers of the International. While this was the relief sought by the original complaint, the acts and actions of the original plaintiffs in compromising the action and in seeking construction and modification of the Consent Order constituted substantial deviation from the nature, purpose, and objectives of the original action. Intervenor-appellants, and other members of the International Brotherhood of Teamsters similarly situated, do not desire continuance of the monitorship system which results in great injury, damage, expense, and confusion to the operation of the International union and its constituent parts. The effect of the Consent Order, as modified by the Order of February 9, 1959, is to maintain this system on a self-perpetuating basis. The system is very cumbersome, expensive, and diverts union funds for purposes not consistent with the pursuit of its aims as a labor union. Maintenance of the monitorship system results in the diffusion of authority so far-reaching and detrimental that it may lead to the result that some local unions may break away from the International. For these reasons, the interests of the original plaintiffs are not coextensive with the interests of the intervenor-appellants, and the original plaintiffs therefore do not and cannot adequately, faithfully, or fairly represent the interests of the intervenor-appellants in the action in the court below. For these reasons the court below did not have jurisdiction over the person of the class and could not, consistently with due process, enter an order binding upon all members of the purported class. The Court's actions, therefore, in entering the Consent Order or in entering the

Order of Construction and Modification must be reversed, for in fact the cause below is subject to a motion to dismiss.

Moreover, the original plaintiffs have not fairly or faithfully represented the interests of the intervenor-appellants or other members of the International similarly situated by petitioning the court below for modification and construction of the Consent Order. Such petition, when granted, deprived intervenor-appellants, and others whom they represent, of valuable rights secured by the International constitution. Furthermore, the plaintiffs compounded their faithlessness by failing to give notice to the intervenor-appellants and other members of the International similarly situated. This failure, however, invalidated the Order of Modification just as the failure to give notice voided the Consent Order under Rule 23(c) of the Federal Rules of Civil Procedure.

While Rule 23(c) technically applies only to "compromises" or "dismissals," such as the Consent Order herein, reached by acquiescence of the parties, and not to orders reached in adversary proceedings, such as the Order of Modification, it was drafted in apparent recognition of the Constitutional requirements of the due process clause. The rule is in fact nothing more than a codification of one of the essential requirements of due process--the opportunity to be heard. Inasmuch as the Order of Modification, in turn, is nothing more or less than an enforced compromise--as distinguished from a voluntary compromise--or an amended compromise, which drastically affects the rights of all persons bound by its terms, it is submitted that due process requires no less notice than does Rule 23(c). An opportunity to be heard by all persons bound by its terms was essential to sustain its validity. Failure to accord notice and an opportunity to be heard thereon invalidated the Order of Modification.

IV. THE COURT BELOW DID NOT HAVE THE JUDICIAL POWER TO CREATE A BOARD OF MONITORS VESTED WITH BROAD UNDEFINED POWERS OF INVESTIGATION AND "HOUSECLEANING."

Judicial power is "the power of the court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision." Muskrat v. United States, 219 U.S. 346, 356, 31 S.Ct. 250 (1911). Pronouncements, policies, and programs of validly subsisting corporations or associations, their directors and officers, or their motives and desires do not give rise to a justiciable controversy save as they have fruition in action of a definite and concrete character constituting an actual or a threatened interference with the rights of persons complaining. Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 324, 56 S.Ct. 466 (1936).

Because the internal affairs of labor unions do not normally give rise to justiciable controversies subject to the judicial power of the court, the judiciary has historically refused to interfere in the internal affairs of labor unions. Fish v. Huddell, 60 App. D.C. 263, 51 F.2d 319 (C.A. D.C., 1931); Courant v. International Photographers, 176 F.2d 1000 (C.A. 9, 1949); Green v. Obergfell, 73 App. D.C. 298, 121 F.2d 46 (C.A. D.C., 1941).

In Green v. Obergfell, supra, a case involving an internal dispute between two unions over which had the authority to organize certain workers, the court in noting an absence of basic jurisdiction (which, it stated, could not be supplied by the trial court's own determination that it had jurisdiction or the consent of the litigants), stated at page 55:

> "Each of the three major labor organizations which are parties to this controversy are voluntary, unincorporated associations; the American Federation of Labor is the parent and the other two are affiliated units of that federation. It is a well recognized principle in

> the law of such voluntary associations that there shall be no judicial interference with intra-association affairs or determinations in the absence of special circumstances showing injustice or illegal action . . ."

In recognition of the time-tested principle that courts have powers to decide judicial controversies only, the Court of Appeals for the Third Circuit, in Webster Eisenlohr v. Kalodner, 145 F.2d 316 (C.A. 3, 1944), cert. denied 325 U.S. 867, 65 S.Ct. 1404 (1945), a representative action brought by a preferred stockholder on behalf of all preferred stockholders alleging fraud and denying such stockholders exclusive voting rights on default of payment of dividends as provided in the certificate of incorporation, said:

> "The fundamental proposition which probably no one would dispute is that a court's power is judicial only, not administrative, nor investigative. A judgment may only properly be given for something raised in the course of a litigation between the parties . . .
>
> "Masters are provided for in the Rules of Civil Procedure, Rule 53. This rule does not, in so many words, place any limitation on the scope of a master's commission. Nor has that question, apparently, been the subject of a great deal of litigation. There are general statements supporting the view that an order of reference cannot be more extensive than the allegations and proofs of the parties and there is some judicial authority to this effect. No authority has been found the other way.
>
> "On principle, however, the matter seems clear. Rule 53 is explicit in its statement that 'A reference to a master shall be the exception and not the rule' and that in actions to be tried without a jury 'a reference shall be made only upon a showing that some exceptional condition requires it.' It is clear, we think, that a master is appointed only to help the court in a case where the help is needed. His appointment and activities are only for the purpose of assisting the court to get at the facts and arrive at a correct result in a complicated piece of litigation pending before the court. The master operates as an arm of the court. Surely he has no wider scope of activity than the court itself. If the court is limited in its judicial duties, to deciding the issues presented in the litigation before it, the master's function can go no further than to aid in the court's discharge of its duties.

* * *

> " . . . The judicial power is limited to deciding controversies. That has been its function historically; that is its function under the Constitution of the United States. No doubt a great deal goes on in the world which ought not to go on. If courts had general investigatory powers, they might discover some of these things and possibly right them. Whether they would do as well in this respect as officers or bodies expressly set up for that purpose may be doubted, but until the concept of judicial power is widened to something quite different from what it now is courts will better serve their public function in limiting themselves to the controversies presented by the parties in the litigation." (at pp. 318-320; emphasis supplied.)

Confined to the exercise of judicial powers only, the trial court was prohibited from using an examiner to conduct an investigation into the affairs of Webster Eisenlohr which had purchased the preferred stock upon which the complainant had based his cause of action. See also Cademartori v. Marine Midland Trust Co. of N. Y., 18 F.R.D. 277 (S.D. N.Y., 1955).

Judicial power of the court may not be validly delegated. Cademartori v. Marine Midland Trust Co., supra. Logically, investigatory powers beyond the inherent power of the court are hardly delegable inasmuch as it is manifestly impossible to confer as an act of judicial power a function which does not inhere in a judicial body. Webster Eisenlohr v. Kalodner, supra; Cademartori v. Marine Midland Trust Co., supra. Neither the Court nor any of its lawfully constituted delegates--i.e., the Monitors--have any power to interfere with the internal affairs of the International union or its constituent bodies inasmuch as such powers do not inhere in the judiciary. Logically, then, the court below had no power or authority to undertake on its own hook a "general housecleaning" of the International union, including but not limited to suspensions or expulsions of local or International officers on grounds of alleged criminality, as directed by the Court's Order of Construction and Modification in approving Monitors' Orders of Recommendation Nos. 12, 16, 17, and 19. Such orders relate to facts, circumstances, and decisions which are solely and exclusively within the province of the International itself and its constituent bodies and may not be regulated under the guise of judicial power so long as the acts and actions of the International and its constituent bodies and its officers are not contrary to any applicable law or laws of the land or the International constitution. Furthermore, it is to be remembered that the matters contained within the Orders of Recommendation referred to go far beyond the scope of the relief prayed for by the original and amended complaint and go far beyond any powers which the appellants as officers of the International Brotherhood of Teamsters could constitutionally confer by approving the Consent Order.

For all the foregoing reasons, the Order of Construction and Modification of the Consent Order entered by the court below on February 9, 1959 should be reversed.

Respectfully submitted,

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A copy of the foregoing was delivered personally this 3rd day of April, 1959, to MARTIN F. O'DONOGHUE, Esq., 831 Tower Building, Washington 5, D. C., and to EDWARD BENNETT WILLIAMS, Esq., 839 17th Street, N. W., Washington 6, D. C., and mailed first class postage prepaid to GODFREY P. SCHMIDT, Esq., 12 East 41st Street, New York 17, N. Y.

Robert Rolnick